***United States Court of Appeals***

***for the Second Circuit***

# APPENDIX

# 74-1720 ORIGINAL

In The

# United States Court of Appeals

For The Second Circuit

MEREDITH CORPORATION, an Iowa Corporation,
*Plaintiff-Appellant,*

*vs.*

HARPER & ROW, PUBLISHERS, INC.; PAUL HENRY MUSSEN; JOHN JANEWAY CONGER; and JEROME KAGAN,
*Defendants-Appellees,*

BRIAN SUTTON-SMITH, an Individual, and PRENTICE-HALL, INC., a Delaware Corporation,
*Additional Defendants on Counterclaim-Appellants.*

## JOINT APPENDIX

**Volume II, pp. 265a - end**


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## TABLE OF CONTENTS

### Appendix


| | Page |
|---|---|
| Docket Entries | 1a |
| Complaint (Filed December 21, 1973) | 3a |
| Answer and Counterclaim (Filed February 8, 1974) | 8a |
| Answers of Additional Defendant Prentice-Hall, Inc. to Counterclaim (Filed March 11, 1974) | 19a |
| Reply of Plaintiff to Counterclaim (Filed February 25, 1974) | 25a |
| Reply and Counterclaim of Brian Sutton-Smith (Filed March 28, 1974) | 32a |
| Reply to Brian Sutton-Smith Counterclaim (Filed May 3, 1974) | 39a |
| Order to Show Cause (Filed May 16, 1974) | 44a |
| Joint Affidavit of Edward A. Miller and John C. Lankenau in Support of Motion for Preliminary injunction | 46a |
| Exhibits Annexed to Foregoing Joint Affidavit: | |

Contents

Page

Exhibit A - (Compilation of Approximately 400 Passages, a copy of which has been supplied the Court) . . . . . 66a

Exhibit B - Child Psychology Report . . . 67a

Exhibit C - Letter From Betty Jane Shapiro to Phyllis Perry Dated April 18, 1972 . . . . . 80a

Exhibit D - Example of Initial Outline . . 81a

Exhibit E - Memorandum . . . . . 90a

Exhibit F - Instructions for Reviewing Manuscript . . . . . 91a

Exhibit G - Letter From Lynne Lumsden to Brian Sutton-Smith Dated October 26, 1971 . . . . . 92a

Exhibit H - Memorandum Dated May 27, 1971 . . . . . 94a

Affidavit of Marshall C. Berger in Opposition to Motion . . . . . 95a

Exhibits Annexed to Affidavit of Marshall C. Berger:

Exhibit A - Excerpt From Deposition of George A. Middendorf . . . . . 105a

Contents


| | Page |
|---|---|
| Affidavit of Brian Sutton-Smith in Opposition to Motion . . . . . | 112a |
| Exhibits Annexed to Affidavit of Brian Sutton-Smith: | |
| Exhibit A - Resume . . . . . | 123a |
| Exhibit B - Author's Notes . . . . . | 143a |
| Affidavit of James H. Clark in Support of Motion . . . . . | 159a |
| Exhibits Annexed to Affidavit of James H. Clark: | |
| Exhibit A - Registration Certificate for 1956 . . . . . | 166a |
| Exhibit B - Registration Certificate for 1963 . . . . . | 168a |
| Exhibit C - Registration Certificate for 1969 . . . . . | 170a |
| Affidavit of Jerome Kagan in Support of Motion . . . . . | 172a |
| Exhibits Annexed to Affidavit of Jerome Kagan: | |

Contents

Page

Exhibit A - Letter From Robert B. McCall to Theodore Miller Dated February 15, 1974 . . . . . 180a

Exhibit B - Letter From Robert A. Haaf to Brian Sutton-Smith Dated March 28, 1973 . . . . . 182a

Interim Memorandum and Order . . . . . 183a

Preliminary Injunction (May 24, 1974) . . . 184a

Opinion (Filed May 30, 1974) . . . . . 186a

Excerpts of Depositions of Brian Sutton-Smith . . . . . 204a

Exhibits Annexed to the Foregoing:

Exhibit 35 - Two-Page Document . . . . 476a

Exhibit 56 - Document Dated October 15, 1971 from Lumsden to Sutton-Smith . . . . . 478a

Exhibit 57 - Letter Dated October 26, 1971 from Appleton-Century-Crofts to Sutton-Smith . . . . . 479a

Contents


| | Page |
|---|---|
| Exhibit 58A - An Agreement Dated November 15, 1971 . . . . . | 481a |
| Exhibit 61 - Letter Dated July 22, 1972 Sutton-Smith to Julie Small . . . . . | 487a |
| Exhibit 62 - Letter Dated July 26, 1972 from Small to Sutton-Smith . . . . . | 488a |
| Exhibit 65 - Letter Dated March 28, 1973 from Haaf to Sutton-Smith . . . . . | 489a |
| Exhibit 66 - Memorandum Dated April 4, 1973 from Jourard to Willems . . . . . | 490a |
| Exhibit 71 - Five-Page Document Entitled "Introduction" . . . . . | 491a |
| Exhibit 72 - One-Page Document Headed, "Learning" . . . . . | 496a |
| Exhibit 74 - Two-Page Document Entitled "Notes On The Adolescent Chapter" . . . . . | 497a |
| Exhibit 75 - One-Page Document Entitled "Cognitive And Symbolic" . . | 499a |
| Exhibit 76 - One-Page Document Entitled "One Month: Reflex Exercises" . . | 500a |

Contents


| | Page |
|---|---|
| Exhibit 77 - Document Entitled "Notes No. 1'' . . . . . | 501a |
| Exhibit 78 - One-Page Document Entitled "Role of Expectancy in Focusing Attention" . . . . . | 502a |
| Exhibit 79 - Five-Page Document Entitled "Imaginative Life, Daydreams and Dreams" . . . . . | 503a |
| Exhibit 80 - Two-Page Document Entitled "Years 8 to 12" . . . . . | 508a |
| Exhibit 81 - Four-Page Document Entitled "Miscellaneous Anecdotes for Infancy" . . . . . | 510a |
| Exhibit 82 - One-Page Document from Julie to Brian . . . . . | 512a |
| Exhibit 83 - One-Page Document Entitled "Social Development" . . . . . | 513a |
| Exhibit 84 - Two-Page Document to "Julie" . . . . . | 514a |
| Exhibit 85 - Two-Page Document Entitled "Chapter 9 Notes SS" . . . . . | 516a |

Contents


| | Page |
|---|---|
| Exhibit 86 - Two-Page Document Entitled "For Epilogue" . . . . . | 518a |
| Exhibit 87 - Two-Page Document Entitled "Titles" . . . . . | 520a |
| Exhibit 89 - Draft of Manuscript by Lawrence Locke, Dated March 17, 1972 . . . . . | 522a |
| Exhibit 90 - Manuscript for Chapter 12 . | 526a |

this came out of my research, too, I believe.

The idea was to have two case studies for each chapter reflecting the main themes for that chapter. If it was cognitive development, case studies on cognitive development.

I remember my part of it was providing from my own book shelves many of the major collections of case study materials in developmental psychology and suggesting which of these might be summarized as cases for our book.

I am sure Julie had other instructions for him about the length and things of that sort.

Q Did you have personal contact with any of the other researchers who worked on the book?

A Not that I know of. As I said, three of my students, David Abrams, Mike Green and Debbie Burke, I know they were working for Appleton-Century on some of Appleton-Century's books.

Debbie Burke worked on one of my books, not this one, though. And I had contact with her although I think she only worked for a few weeks.

But, as far as I recollect, I didn't have contact with the researchers for my book other than Lee Peterson.

That's to the best of my knowledge.

Q His work was limited to the case studies?

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A Yes, to the best of my knowledge.

Q Professor Sutton-Smith, did you have contact, personal contact, with any of the writers?

A No. No, I didn't. I didn't with any of the writers.

Q Did you understand that each of the writers was provided with an outline?

A Yes.

Q Together with some source material?

A Yes. That was Julie's job.

Q Did you receive copies of the outlines?

A No.

Q You did not?

A No.

Q Did you ever ask to see copies of the outlines?

A This I don't recollect. I might have in the beginning.

I remember one stage, Julie said, you want to see the outline.

And I remember clearly saying, hell, no. That's your job.

That's the only clear recollection I have about outlines.

But, that was into the process where I had so much

work to do on the book that I had my job to do.

And the manuscripts were poring in and that's the reason for that statement.

Q Did you receive the first drafts that were prepared by the writers?

A Yes. I think so. I suppose they were.

Usually there was -- they had been -- some editing had gone already by the time I got them. Not always. LIke there would be remarks, I think by Julie, "Ignore this section, we won't use this, or we are going to drop that," or something like that, or "This has to be rewritten."

They were warning me not to get upset about some bad writing and things of this sort, because I would comment on anything like that.

So I would get them in pristine shape. They would go through Julie before I got them.

And somebody else. Elizabeth Brown, I think. She played a role, too, as an editor in this.

Q The drafts that you received then may have contained some additional comments by Julie Small or other people?

A Or Elizabeth.

Q Or Elizabeth Brown?

A Yes.

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Q As far as you know, with that qualification, you received the first drafts as they were prepared?

A Yes. Right.

Q Did you read them carefully?

A Yes. That's what took all the time.

Q You made then suggestions --

A I would add pages and cross things out.

Most of the times I tried to comment on the margins. Most of my comments are written alongside.

When I felt I couldn't manage it on the page, I would type up a new page.

Q Did you rewrite yourself any of those first drafts?

A I wouldn't say rewrite, no. I would say emend, edit. I saw myself as an editor, sort of a general cersor, a suggestor of things left out.

Sometimes a lot of my suggestions came at this point. I discovered that they had forgotten so-and-so, they have got to have that in there, and so on. That's on the first draft.

Q These suggestions were either on the draft itself, marginal notations, or on a separate sheet of paper?

A Yes. If it was a lot, it would be on a separate page. I think you would have to call that editorial rather than writer.

Q Sometimes did you submit them orally?

A Well, I would tell Julie orally what I thought of the chapter and what I wanted added, what I thought shouldn't be there.

But I think I -- most of it was written at this time. I would also tell her, but it mostly would be there. I doubt if I trusted just an oral response.

Q After you had submitted your comments on the first drafts, what happened then in the process?

A Then it came back to me again, maybe three weeks or a month later. I don't think it went back to the first writer. It might have, but I think it went back -- you would have to ask Julie. It was mentioned sometimes of other writers.

The first writer, whoever he might have been, would be working on another copy and then a second writer would work on the reediting. That's where the name Elizabeth Brown -- I remember having quite a few telephone contacts with Elizabeth Brown and I talked with her about my comments because I wanted her to get them in to the rewrite.

Q She was --

A She came not in the beginning. I would say somewhere - it could have been in the beginning, as far as the chapters are concerned. But the discussions with her

start in about a third of the way through the process.

But that probably would have been about when I was beginning to get chapters.

Q It was your understanding that she was doing some of the rewrite work?

A Some of the rewrite, yes, reedit, rewrite.

So I would get again a second rewrite and then I would do the whole thing again with the understanding that this was now fairly final and I needed to be very careful.

Q Do you know approximately when the manuscript went into production?

A We began in the end of November there somewhere, I guess.

MR. BERGER: When you say went into production, do you mean submitted to a printer?

MR. MILLER: Yes.

A I think they began submitting it to a printer before we finished our rewriting process. In other words, when we had been through the two cycles, when I had been through some of my recycles, some of the chapters went to the printer before we had finished. This is only hearsay from what Julie told me.

Q Did you also receive galleys of the book?

A Yes. That was a third edition.

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Q When did you start receiving galleys?

A I am not sure. I think in the summer, the next summer.

The busiest period was the next summer. I got the galleys then and we were still in other chapters, too, and one in second stages of chapters.

I think it was all finished by me some time about the end of summer, September, October, I think I was done.

Q 1972?

A Yes. Somewhere in that period. It was about a year after we started, I remember. I was done with my -- that's the best recollection I have.

(CONTINUED ON NEXT PAGE.)

Q Also you made comments or suggestions for revisions on the galleys?

A Yes. Not so many, of course. That's when Lois Bloom actually did her emendation. She actually caused me a heartache by chopping out a whole paragraph and adding another one.

They were fairly malleable about galleys, much more so than most people are about their galleys. They will let you have a sentence if it's the same space.

They were not rigid in that way about galleys.

Q Professor Sutton-Smith, did you know that there was someone other than Julie Small who prepared some of the chapter outlines for the book?

A She might have told me that, yes. I'm not sure. I have learned that from hearing something the other day. I don't know whether I knew that or not.

Q Did you know who that was?

A No.

Q Did you ever have any contact with that person?

A No.

MR. MILLER: I would like to take a luncheon break now. Maybe we can get back together at 1:45.

(At 12:30 o'clock P.M. the deposition

recessed for lunch.)

- - -

AFTERNOON SESSION

May 7, 1974
2:00 o'clock P.M.

B R I A N S U T T O N - S M I T H, resumed, having been previously duly sworn, testified further as follows:

EXAMINATION

BY MR. MILLER:

Q Professor Sutton- Smith, in your Answers to Interrogatories you provided some information as to visits to Appleton-Century-Crofts in 1971 based upon your tax records which were Exhibit 1 to your Answers.

Would you turn to that exhibit, please?

Would you tell me when that exhibit was prepared?

A (Perusing) It's a part of my file. It would have been done in -- 1971 would have been done in 1972, I guess. I get the stuff to the accountant, when is it, April 15th? It would have been done a month or so prior to the tax date. I usually get my stuff to my accountant about then. In other words, the beginning of the next year is when I try to decide how I made my expenses the previous year.

Q On what basis did you prepare this particular document?

A Pretty much just from memory of how many times I

thought I had -- what I do is I go through my consulting list of firms I got money from and try to recollect how many times I went out of town and stuff like that. It's an estimate at best.

Q Did you have any diaries or such documents that you referred to?

A I don't have anything systematic. At that time I would have pages of the big calendar I have at school which has appointments to see me. I quite often write appointments there.

But that, in itself, isn't quite right, either. I generally went Fridays to Appleton-Century and because of that I wouldn't put it down. But I didn't always go Fridays.

Q Do you still have that big calendar that you referred to?

A No. I hoped that I would have that stuff. This is back several years. Like I have all the muck that went for this year but I don't have all the bits and pieces for the -- this is the stuff I used to make up a summary which I give to the lawyer. So what I intend to have now is this stuff that I summarized from whatever evidence I had at the time for the lawyer. But I don't have all the bits and pieces.

Q Could you tell me what AP/100 means on that --

A Appleton-Century. It's my abbreviation.

Q Were all of these visits that are listed on here really visits to Appleton-Century, itself, or could they have been trips to New York?

A Oh, no. I think those would be to Julie --

Q I am referring to the ones that say "parking and meals for seven days."

A Right, yes. That would include -- this is 1971 so this presumably might include the ones mentioned in the correspondence, plus other ones.

It's an estimate of how much I went.

Q Were all of these actual visits to Appleton-Century or could they have been trips to New York when you did work at your office at Teachers College?

A No. They are quite different. Teachers College is uptown. That doesn't count.

These are trips downtown to Appleton-Century, yes. I at least went this amount of times. I think I probably went more. I tend to underestimate for tax purposes.

This wasn't for you. This was for tax purposes. I play it safe for taxes.

I did some reviewing of journals, too, to get

myself up to snuff.

Q Now, the next item is the library work at Butler.

A Yes. Butler is at Columbia. That's just across the way from us.

I don't usually go there. That was work done just for this purpose.

Teachers College is not so good on child psychology journals. Of course Butler has a very fine collection. One can be sure of making a survey of the last couple of years of journals at Butler. So I went there, which is beyond the usual call of duty, and relevant to this book. That's why I put it in the taxes.

Q On Exhibit 2, would you please refer to that? At the top is the notation, "1972, Appleton-Century."

A Yes.

Q What is the handwriting that is directly underneath that, crossed out?

A "Child Lore, 1, 2, 3, 4."

Q Lore, L-o-r-e?

A Yes. It has nothing to do. It's just a sheet of paper that I used at the time. I don't always use clean sheets of paper.

Q Underneath that there is some handwriting that seems to start out, "Lunch." I am not sure.

A "Lunch and parking," yes.

If I would go downtown and spend a fair proportion of the day there I would charge for lunch and parking.

Q Then what is the word after "parking"?

A "Fridays or other."

Q "Fridays or other"?

A Yes. Or other days.

Q Was this document prepared in March of 1973?

A 1973 I think this one would be.

Q What was the basis for the twelve-dollar charge for the eighteen days?

A I think I was working on six parking and six lunch. Six and four. I think I was working on six and six.

Q Now, the first --

A That stands for two occasions, three occasions, four occasions. Those are the months January, February, March, April, May, June.

Q From January to June you had eighteen separate occasions; is that right?

A That's right. That's what I estimated for tax purposes.

Q Then from September to December you had eight?

A Eight.

Q Eight other occasions?

A Yes.

Q Was there a reason for separating the January to June and September, November and December?

A There was in terms of sort of work. July down below was the intensive period. There was an enormous amount of work in July. In a sense at that time I was dealing, I believe, with galleys and chapters, the first and second.

The year culminated the very intense work of the summer. The period of November and December, I don't know what happened on those visits, but the work was mainly over by then. We were talking about -- I am not sure what we were talking about. That was the reason I did it, anyway.

July should be in the middle there, but that was the period that was most intensive for me.

Q During this period were you also working on the reader?

A Yes. That came up, I think, in the summer. I know it was in the summer. Yes. It was summer, I remember.

Q Does your time on this Exhibit 2 include the work that you also did on the reader?

A I guess yes, it would, yes. It's part of the July effort.

Q Did you do any work on any other books for Appleton-Century?

A We began in the fall, yes. We began in the fall, that's right, after summer on another book for Appleton-Century, yes. That's what the September, November, December is, I believe.

No, it couldn't be because -- I am not sure. There is a third volume which is not out which stands in abeyance waiting which I got on to at the end of this other book. Whether that was summer or fall I am not sure.

Q What is that volume?

A It's called Developmental Psychology.

Q The eight times in the fall may have related to that volume?

A They might have. I'm not sure what they relate to. Whether they relate to that or to the discussions of the other one after it was done. So I really don't recollect.

But they most probably relate to the next one, the Developmental Psychology one.

Q Are there any other books that you have worked on with Appleton-Century-Crofts, discussed with them?

A No. But I have another contract with them for an adolescent psychology book. But nothing was done on

that, at least not by them. A lot was done by me but not by them. But that was in the subsequent year.

Q Did you have any library work in 1972 on this book?

A I don't recollect any special effort at that time.

Q You didn't claim any of that on your tax returns for 1972?

A No. When I began I was concerned with an initial survey of the latest journals to make sure that I had in my head any new developments.

Q In July of 1972 you had thirteen days at twelve dollars per day; is that correct?

A Yes.

Q That twelve dollars was lunch and dinner?

A Estimated lunch and dinner, right.

Q Where was that work done?

A That work was done at Amagansett at a summer cottage. One of the reasons for claiming was that I wasn't home, I had actually to go out and get meals as a result of this work.

Q You were at Amagansett but that wasn't your home that you were at?

A That's a summer cottage.

Q Have you gone out there just to work on this book?

A I couldn't say that I went out there just to work on this book, but that's what I did most of the time.

Q Were you there with your family?

A Some of the time they were; some time they weren't. Sometimes I would be there and sometimes I would be in town. It's only two hours out there.

Q During this thirteen days you did not have lunch and dinner at your place in Amagansett?

A That's the idea. That's the idea of this claim, that as a result of my being on my own at the time I had to eat out, buy meals. I was working on a special project and, as a result of that project, wasn't able to look out for myself in the usual way. I had to go out for meals. That was my rationale for this expenditure.

This as related to money I spent on the project for the previous year. It seemed to be a reasonable expense. In fact, it's minimal.

Q Professor Sutton-Smith, did you ever have any discussions with Julie Small or anyone else at Appleton-Century concerning plagiarism?

A Let's see. I wrote a letter once where I

contended that I thought maybe such an infringement might be occurring in one of the manuscripts. That letter is in the documents, in the material I supplied.

MR. MILLER: I hand the reporter a letter dated July 22, 1972, from Brian-Sutton-Smith to Julie Small, and ask that it be marked as Defendants' Exhibit 61 for identification.

(A one-page letter dated July 22, 1972 from Brian-Sutton-Smith to Julie Small was marked Defendants' Exhibit 61 for identification, as of this date.)

BY MR. MILLER:

Q Professor Sutton-Smith, I hand you Defendants' Exhibit 61 for identification and ask you if that is the document that you are referring to.

A (Perusing). This is a letter I wrote.

Q Would you tell me what it was that preceded your writing of that letter?

A As it says here, Chapter 10. Sections of Chapter 10 seemed to me to be -- in my mind when I wrote that letter I felt that they were copied from Mussen, Conger and Kagan.

Q What led you to that conclusion?

A Well, because of the general -- the categories

dealt with were so similar to theirs. It's the stuff on encoding and whatnot. Just a section of that chapter, I think.

The part I think that I thought was from their book was -- well, you know, it's a question now whether it was this part or a draft. I am responding to a draft of a chapter and not necessarily what the final is like.

But the part on encoding on Page 307, I remember that as being a part of it.

The other doesn't now strike me as being what I was protesting about. But that part I remember about. It had to do with that section, anyway.

Q The section that began with encoding?

A With encoding, yes. I recollect that. I don't recollect what else was there. As I look at the other, I don't get any sense of familiarity. But it was certainly that part.

Q When you received the draft of Chapter 10 did you compare it to Mussen, Conger and Kagan?

A No. I recollected. I had read their book through and I recollected that that was their approach. That's what got me mad. I got annoyed and that's what that letter was.

(Continued on next page.)

Q You also state in the letter that, quote, "I have not felt that the others were like this, but did a good job of assimilating a diverse mass of material."

Did you do any checking of the other drafts against Mussen, Conger and Kagan as you received them?

A No, I didn't. I wasn't particularly concerned with Mussen, Conger and Kagan.

See, this is distinctively their work and so I recognized it as such.

No, I didn't. I had no cause to do that.

Q Can you tell me who Joe Church is that you referred to in that same paragraph?

A The book, the other sort of leading book in terms of sales was Stone and Church. That's Joe Church of Stone and Church.

Q What had Joe Church said to you?

A He had said that -- this had some trouble.

There is a Psychology Today text. I think it is called Developmental Psychology.

And he had said there had been some pieces taken apparently directly from his text or something of that sort he told me about.

Q When did that conversation occur?

A It must have occurred in July while I was out at

Ammagansett. He has a house out there, too.

Q Do you remember anything else about that conversation with Joe Church?

A No. No, I don't.

In hindsight, perhaps, but not at the time. It's interesting that he introduced that to me at that time. But it was just a generalization on his part about his book.

I wondered subsequently why he said that, but there was nothing else said at the time.

Q Had you previously had, prior to the writing of this letter, had you had discussions with Julie Small concerning plagiarism?

A No. I think in the very beginning I raised the question about writers and plagiarism and was assured that everybody took a contract the same as I signed, the writers had to sign such a contract.

I received these assurances in the early, in the beginning, I believe.

That's the only other time that it came up.

Q Did you receive any other information as to how the writers prepared the drafts of their chapters?

A No. That was Julie's job. This was very much of a sort of people doing particular jobs. Her job was to

organize the material I gave her and what other materials she got from researchers, and so on, and make a chapter organization.

Q Did you know whether or not the writers received copies of Mussen, Conger and Kagan?

A No. I was not told that.

Q Did you ever ask that?

A No, I didn't. Not to my recollection.

Q Did you have any understanding as to that?

A Well, you know, there was McCandless, Stone and Church and Mussen were the three leading books. And my understanding, of course, was that all of these had been looked at as comparable texts to be surpassed. These were texts in the field and if we were to beat these, these had to be reviewed.

Q Was it your understanding that these texts or portions of them were to be given to the writers in connection with their preparation of the first drafts?

A No, it wasn't.

Q That was not your understanding or it was your understanding that they were not to be provided?

A We had no understanding about it one way or the other. It was not even mentioned.

Q Professor Sutton-Smith, in the next paragraph of

your letter that we are referring to, you said, "I believe I asked you earlier for a close watch on this type of paraphrasing."

A Yes.

Q Does that refresh your recollection as to whether there were earlier conversations with Julie Small concerning paraphrasing from other works?

A Well, obviously I must have said it from this letter, but I don't remember the particular conversation. I probably, in the very beginning, just as I got the assurance about plagiarism, had that sort of concern. Anybody would, going into a project of this sort.

Q Your next sentence reads, "I insist again that one of your workers go through the chapters and give us a sentence account or some such."

Had you previously made such a request?

A I don't remember it, but it was just a part of my general, when I began this contract, my general concern that we got -- seeing I wasn't controlling the actual writing, that I be guaranteed that there would be no taking from other sources without careful checking.

Q Had you, prior to this time, received any written reports as to checking each chapter as it came in for this question?

A No. Not really. There was nothing.

This is a particular occasion when the anxieties I had when I first began this book which anybody would have suddenly got me very concerned. And the letter was too -- in a sense, was a memory of the earlier, what you would naturally, any writer who has never participated in a book with other people writing it, would naturally before he started, those anxieties would be invoked by this particular occasion.

Q Did you have a discussion with Julie Small concerning this letter?

A Yes, I did. Immediately sent it off and I think this next day I think we talked on the phone and she responded with a letter of her own, which reassured me.

Q What took place? What was said during your telephone conversation with Julie Small?

A She pointed out that the source was the one that -- quoted here and the -- what was humiliating to me in that was that that source was one that I had already given. I had forgotten that I had given them the Carmichael. It's in the Carmichael Handbook which is something I had been pushing all along as our main source for conventional materials.

MR. BERGER: Let the record note that when he

referred to the source here, he was pointing to footnote 2 on page 307 of the Sutton-Smith book.

A Right.

And that she had, in fact, taken -- that was the source for the material in the book which I mistakenly thought was from the text because I had forgotten about the original source from even their text.

Their source, itself, relies on an original source by Kagan and Kogan. So I made to be a bit of a fool over that particular event.

I had no further worries about the problem because it wasn't a problem. It was my mistake. The letter was my mistake. I had mistaken the source that they had used.

MR. MILLER: I hand the reporter a letter dated July 26, 1972 from July Small to Professor Sutton-Smith and request that it be marked Defendants' Exhibit 62 for identification.

(A one-page letter dated July 26, 1972, from Julie Small to Profession Sutton-Smith, was marked Defendants' Exhibit 62 for identification as of this date.)

BY MR. MILLER:

Q Professor Sutton-Smith, is this the letter that you received from Julie Small with respect to this matter?

A Yes. This is the letter I received and the letter I provided you with in my response to the interrogatory.

Q In the first paragraph of the letter the sentence appears, "I wish to review the discussion we had yesterday concerning this matter and the agreement we reached on the material in question."

What agreement is she referring to?

A That I was being wrongheaded. That it was, in effect, from the original source which I had submitted and recommended.

But you have to realize we were doing a lot of work and a lot of chapters at the same time here.

My response there was unnecessary.

Q Professor Sutton-Smith, during your discussions with Julie Small on this, did you ask her the extent to which the material in the draft was based upon Mussen, Conger and Kagan?

A No. I said something like isn't it based on Mussen, Conger and Kagan.

And she said, no, it's based on Kagan and Kogan.

Q Did you ask her whether any portion of it was based on Mussen, Conger and Kagan, any portion of the draft?

MR. BERGER: You mean chapter 10?

MR. MILLER: Yes.

A I think my previous reply excludes that possibility of that being a question.

I said, isn't this based on Mussen, Conger and Kagan.

And she said, no, it's based on Kagan and Kogan.

Q Is it your understanding that she was saying it was based exclusively on Kagan and Kogan?

A No. Not necessarily. What section?

Q I am referring to the draft, the portion relating to problem solving which goes in the text from pages 307 on through 314.

A Well, the piece that I recollect protesting about was that first page with the encoding. I don't recollect whether the other was that part I protested about in that draft.

Q Would you look at Defendants' Exhibit 62 for identification again, please?

A Yes.

Q Does it not state at the beginning, "Material on problem solving which you are concerned is taken from the MCK text"?

A "Which you are concerned about being taken from," that's how it should read.

Q Yes.

A And it says, "The material on problem solving is based largely on one of the leading investigations, the Kagan and Kogan article."

Now, what was your question?

Q Professor Sutton-Smith, you have testified now that your area of concern was the encoding section in the last draft.

A Yes. Right. That's the part I remember as keying me off to think, hey, that's a textbook. What's that doing here?

That was the clue to me and the reason I wrote the letter.

Q Did you express concern to Julie Small concerning the whole section on problem solving?

A What did I say in the letter? It says the first draft of the chapter.

Q Professor Sutton-Smith, the response refers to the material on problem solving and then comments that you were concerned that it had been taken from the MCK text.

A Right.

Q Is it your recollection that it was the problem solving section that you expressed concern about?

A Yes, yes. All right. That's the section. It's

in that area.

Just how much of that was like that, I don't know. That's what I am being cautious about. I don't remember whether the draft then was this or whether this was subsequent to that. But at this time it was this problem solving section that I was concerned with, yes.

Q You did not understand July Small to say that the section was based exclusively on Kagan and Kogan, did you?

A Well, you have to remember that in this chapter we are comparing a Piagetian approach with an analytic approach. And the analytic approach is nicely illustrated by Kagan and Kogan's work. And in other parts of this chapter we are contrasting the Piagetian global approach to the same problem with the analytical approach of Kagan and Kogan.

And the analytic approach, as I say, I felt nicely expressed.

Q I would like an answer to my question: Did you understand Julie Small to be saying that the section of the draft was based exclusively on the Kagan and Kogan article?

A I'm not sure about exclusively because she probably didn't use any words like that. But, based on the Kagan and Kogan article, it was one of the bases for the article, yes. She certainly did say that.

Q Did you ask her whether it was based on Mussen, Conger and Kagan at all?

A No. That came up when I clarified and told her what we were doing at an earlier stage.

Q You did not ask her that question?

A No.

Q Did you, yourself, make a comparison in the draft in the section from Mussen, Conger and Kagan?

A I probably did, but I don't know. I'm almost sure I must have because reading it I thought this is like Mussen, Conger and Kagan. It sounds more recent than the Kagan and Kogan article. So I, at that time, probably checked it, felt that the categories were the same and then made this point.

Q Prior to writing your letter to Julie Small, you had made such a comparison?

A I think I must have, yes.

Q After discussing it with Julie Small, did you compare this section of the draft with the Kagan and Kogan article?

A Yes. I took a quick look at it and decided she was right, I had got it wrong. They had copied themselves.

Q You did this on a basis of a quick look?

A Yes. Because the Kagan and Kogan article is a more

adequate representation of these issues than the text. It's the primary source. Therefore, should have been our source, too.

Q Did you make a review of the Kagan and Kogan article and the Mussen, Conger and Kagan section sufficient to satisfy yourself that it was more based upon Kagan and Kogan than Mussen, Conger and Kagan?

MR. BERGER: What do you mean, more?

MR. MILLER: I will strike that out. Let me ask the question again.

(CONTINUED ON NEXT PAGE.)

Q Did you make a sufficient review in your own mind of the Kagan and Kogan article and the Mussen, Conger and Kagan book to satisfy yourself that this material was based upon Kagan and Kogan and not Mussen, Conger and Kagan?

A I was satisfied with their response that it was. I had no reason to distrust her.

Q This was an important matter, wasn't it, Professor Sutton-Smith?

A You have to remember the circumstances I have mentioned to you. As soon as she told me and I realized the mistake I had made, then it was all rather pointless.

Q Still hadn't you noticed some striking similarities in the draft and the Mussen, Conger and Kagan text?

A That's what I thought I had noticed, yes. But, in actual fact, they related to the original article.

Q Didn't you consider it important to satisfy yourself rather than relying on someone else as to what was the basis for this section of the draft?

A I don't mean that I didn't look at the Kagan and Kogan. I looked at it again and I was satisfied. I took a glance at it and it seemed -- I knew that article, too. You need to realize that I knew them both. It's just that I forgot in this particular case about that article.

When she reminded me of my own recommendation to her, that was that.

Q Did you ask to see the chapter outlines on this chapter?

A No.

Q Weren't you interested in the instructions that had been given to the writer?

A No.

Q Wouldn't you have been interested to know if it was true that the writer had been directed to Mussen, Conger and Kagan in preparing this draft?

A I had no reason to believe that he had after her response to me it was Kagan and Kogan.

I was satisfied with her response.

MR. LANKENAU: Why don't you let the witness answer?

MR. NEWITT: I am not telling the witness not to answer.

MR. LANKENAU: You were cutting him off or something.

BY MR. MILLER:

Q Professor Sutton-Smith, have you, subsequent to your conversation, to the discussion we have just been reviewing, have you subsequent to that made any comparisons

of the material in the Sutton-Smith book and the Kagan and Kogan article?

MR. BERGER: Prior to the institution of this litigation?

Q Well, the first question is prior to the institution of this litigation.

A I have described what happened. Nothing more than that.

Q At any time subsequent to your July discussion with Julie Small and prior to the institution of the lawsuit did you make a comparison of the section in Sutton-Smith that we have been talking about and the Kagan and Kogan article?

A No.

Q Did you make any such comparison after the institution of the lawsuit?

MR. BERGER: I object to the question and direct the witness not to answer because you may be leading into work product prepared for the trial.

MR. MILLER: I may be leading into work product?

MR. BERGER: Exactly right. That Professor Sutton-Smith has under my direction been making

8

* * *

MR. BERGER: I direct the witness not to answer. I suggest that you go on to another line of inquiry. This line of inquiry I will direct the witness not to answer.

If you choose to bring this up to court, fine. I think I have made my position clear.

Q Professor Sutton-Smith, did you at any time prior to the letter which Harper & Row sent to Appleton-Century-Crofts make a comparison of any kind of the material in your book compared with the material in Mussen, Conger and Kagan?

A No.

Q Professor Sutton-Smith, I hand you Defendants' Exhibit 35 for identification which was introduced and identified during the deposition of Julie Small and which comes from the files of Prentice-Hall (handing). I believe Julie Small identified this handwriting on that as having been hers and she testified that she believed that the typewritten portion was prepared by Professor Sutton-Smith.

A (Perusing) Right. I think this is mine, yes.

Q Is that a document which you prepared, Professor Sutton-Smith?

A I believe so.

9

Q There is handwriting on the right-hand side which says, "See Levine and Mussen."

Is that your handwriting?

A Right.

Q There is other handwriting that says, "Let's keep aggression for pre-school years."

Is that your handwriting?

A Yes.

Q And the material at the bottom of the page, the handwriting at the bottom of the page, "This is from early stages of planning."

Is that your handwriting?

A No.

Q But the typewritten material on the first page of this exhibit was typed by you?

A Yes. I think so, yes. I have a copy of this in my Interrogatories, too, I think.

MR. MILLER: Has this document been produced? I haven't seen it.

MR. BERGER: I don't recall.

THE WITNESS: I think it is in the introductory material somewhere. And it doesn't have this writing on the bottom.

BY MR. MILLER:

Q Professor Sutton-Smith, is the material on the second page of this exhibit also material that was prepared by you?

A Yes.

Q Professor Sutton-Smith, would you tell me the circumstances under which this Defendants' Exhibit 35 for identification was prepared?

A This is my attempt to show that we needed three separate chapters for the first -- this is very early in the piece where we were still haggling about organization.

MR. BERGER: You said three chapters in the first --

A The infancy period, the zero to eighteen months period. I wanted to have three chapters. And this discussion how Julie might think about them. Particularly the second page. And illustrate the sort of content of that three chapters like that would have to deal with.

But, as I said, there was a great deal more that went into the hopper. But this is what that is.

I think there must have been sort of arguments about other chapter organization and I was very concerned to have the organism, social cognition thing, separate. This is my argument along those lines, the part of

11 illustrating the importance of the distinction.

MR. MILLER: I hand the reporter a document dated 8/7 from the files of Meredith/Prentice-Hall, and request that it be marked Defendants' Exhibit 63 for identification.

(A one-page document dated 8/7 was marked Defendants' Exhibit 63 for identification, as of this date.)

BY MR. MILLER:

Q Professor Sutton-Smith, there is a reference in Defendants' Exhibit 63 for identification to the --

MR. BERGER: I think you should establish whether the witness has ever seen this document before.

MR. MILLER: I am just using it to refer to a particular phrase, Mr. Berger.

Q There is a reference to the expanded Sutton-Smith. Do you know what that refers to?

A It might be the second book. I have never seen this before.

Q I understand.

A It might be Developmental Psychology.

Q You didn't use the phrase "the expanded book" in reference to Developmental Psychology?

* * *

* * *

years in my lectures.

The selection I chose is a very -- it describes the sexual behavior of the King of France in the early 17th Century. I chose it for the book because it has a very considerable shock effect in terms of the understanding of child rearing.

Now, I wanted it to be the first thing in the book in order to have this shock impact. However, whosoever I am writing to raised some objections to my readings.

I said I won't give it up. We will put it behind Ryerson which is much more academic. Therefore, I suggest we mask it.

That's what that's about.

MR. MILLER: I hand the reporter a letter dated March 28, 1973 from a Professor Haff to Dr. Brian Sutton-Smith and request that it be marked Defendants' Exhibit 65 for identification.

(A one-page letter dated March 28, 1973 from Professor Haff to Brian Sutton-Smith was marked Defendants' Exhibit 65 for identification, as of this date.)

MR. BERGER: The exhibit has been marked and shown to the witness.

BY MR. MILLER:

Q This is a document that has been marked for identification and you have seen it?

A Right.

Q Is this a letter that you received from Professor Haff?

A Right.

Q What did you do after you received this letter?

A I don't know. I don't know whether I contacted Julie. I contacted somebody and said, what's this all about.

Then I think I had a letter back from them, how did this happen.

And I think there is a letter to me back from them giving me the answer or saying that they are doing something about it or something like that.

MR. MILLER: I hand the reporter a document, a memorandum dated 4/4/73 from Jourard to Wilems, and request that it be marked Defendants' Exhibit 66 for identification.

(A memorandum dated 4/4/73 from Jourard to Wilems, was marked Defendants' Exhibit 66 for identification, as of this date.)

BY MR.MILLER:

Q Professor Sutton-Smith, have you ever seen a copy of Defendants' Exhibit 66 for identification?

A No.

Q This is a memorandum from Julian Jourard concerning a telephone call which he received from Sutton-Smith. In the memorandum Julian Jourard states that "According to you the figure had been lifted directly from Mussen, Conger and Kagan."

Is that what you told Julian Jourard?

A I told him what was in the letter that we previously got.

Q What was it?

A That's not my phrase.

Q You passed on --

A I think I sent a copy of this letter to him. If it was him. See, I don't recollect whether it was him.

MR. BERGER: By this letter you mean Defendants' Exhibit 65?

THE WITNESS: That's right.

A I think I must have told him about judging by his letter here, but I know I sent it in to him.

Q Did you also tell Julian Jourard that you were also worried about the implications of this?

A He says I was. I believe I would be, yes.

Q Did you receive any other letters with respect to --

A I think I had a reply --

Q Complaining letters similar to that which Professor Haff wrote to you?

A No. That's the only one.

There is one other letter in the file from some guy that didn't like my positive mention of Kennedy.

MR. NEWITT: Didn't like your what?

THE WITNESS: Positive mentioning of the Kennedy family as a sort of genetic success. That's the only other complaint that I received personally.

MR. BERGER: I think they mentioned the Buckley family.

MR. MILLER: I hand the reporter a letter dated June 20, 1972 from Robert Spencer to Professor Brian Sutton-Smith and request that it be marked Defendants' Exhibit 67 for identification.

(A two-page letter dated June 20, 1972 from Robert Spencer to Brian Sutton-Smith was marked Defendants' Exhibit 67 for identification.

as of this date.)

BY MR. MILLER:

Q Professor Sutton-Smith, did you receive a copy of this letter (handing)?

A (Perusing) Yes, I think so.

Q It was produced by you. In the first paragraph, the first sentence of the letter says, "Thank you for your recent letter containing your comments on the market research report's report on texts in child development."

A I think he means the readings. That's what he sent me.

Q You think he means the readings?

A Yes. Because it's the readings I have got that's in my file that I have given to you.

Q This did come from the file on readings; is that correct?

A Right.

Q Did you receive a copy of the market research report on readings?

A Yes, I did. It's in my file. And from him. And that's what I think he is talking about because I don't remember ever getting from him or anybody a market research report on the text.

(A recess was taken.)

(The deposition reconvened with all parties present.)

B R I A N S U T T O N - S M I T H, resumed, having been previously duly sworn, testified further as follows:

BY MR. MILLER:

Q Professor Sutton-Smith, to what extent did you rely upon Mussen or did you use Mussen, Conger and Kagan in your work on Child Psychology?

MR. BERGER: You mean the book?

MR. MILLER: Yes.

MR. BERGER: Child Psychology?

MR. MILLER: Right.

A Not at all. Except in the beginning, they asked me to review the book in the beginning. And, as I recollect, I looked at it and made references to it in the early stages when we were getting organized, oriented, and so on.

That's about it. They had asked me to do that and I did it.

Q They asked you to review it?

A Yes.

Q Did you prepare a review of it?

A Nothing written, no. I'm not very favorable to the book.

But I referred to it occasionally in making points I wanted to make.

Q To whom did you give your oral report on the book?

A I don't think I ever made an oral report on the book.

I had a request to review it which that meant to me was I looked at it, did a quick reading.

I was very familiar with other textbooks, but not that. I knew Stone and Church because I used it for years in teaching. I used McCandless for years as a textbook. Those were the main two. I knew them very well but I didn't know Mussen, Conger and Kagan very well.

Q What comments did you make to people at Appleton-Century concerning Mussen, Conger and Kagan?

A I think it is contained in what I said before about the difference between a constructivist approach and a scientific realistic approach.

Their book happens to be like most of the literature that way. That's about the sum of it.

I didn't spend time criticizing their book.

Q Did you specifically refer to Mussen, Conger and

Kagan in a report to people at Appleton-Century?

MR. BERGER: When you say "report" do you mean written report?

MR. MILLER: I believe the witness has already testified that there was no written report, that whatever comment he made would have been made orally.

A I don't think there was sort of a specific report on Mussen, Conger and Kagan.

In the early stages in referring to all sorts of things they would undoubtedly be mentioned. I mean I would be talking about Stone and Church. McCandless had some very good sections I liked.

But my recollection is my big emphasis was on the usage of chapters in the Handbook which Mussen edited which keeps tangling this up.

Q That is the Carmichael?

A That is the Carmichael one, which is really the basic source for people in my field. Two thousand pages and about thirty articles. They are the basic review.

Q I am still not sure, Professor Sutton-Smith, whether I have gotten the comments that you did make to Appleton-Century concerning Mussen, Conger and Kagan.

MR. BERGER: Did you say anything else about

the Mussen, Conger and Kagan book to anybody at Appleton-Century-Crofts?

A I think in the early phases, in talking about different sorts of ways of organizing and different content I probably referred to it occasionally.

I was asked to so do so I probably did. But there was no sort of separate report on it, nothing like that.

Q Can you remember about what you did say concerning Mussen, Conger and Kagan?

A I find it difficult to remember anything because what I remember is what I emphasized. That's the sort of stuff we were talking about this morning. Your memory is of what you actively do and what I actively did was push my points of view. That's a fact.

Q You have given me your best recollection of any comments that you made to Appleton-Century concerning Mussen, Conger and Kagan?

A Yes. I can't remember in substance much of what I said about them or anything much. That I would refer to them occasionally just as I would refer to Stone and Church and McCandless, particularly in the early phases when we were arguing about what the chapters ought to be and how they were to be subdivided. When we were in the organizational phase.

Q Can you remember any specific references that you made to Mussen, Conger and Kagan in any of your early discussions?

A I think in the Interrogatory I have given to you some things we typed out that did refer to them. I have forgotten what they were.

Q This is your Answers to Interrogatories?

MR. BERGER: I think the witness has been continually confused in this session, and I haven't bothered to correct him. But he refers both to document production and to the Interrogatories interchangeably as Answers to Interrogatories.

A I think there were a few times in those documents when they were referred to and I can't remember just what they were. But I enclosed that in the material. You might care to check that out yourself. I can't remember what it was even.

BY MR. MILLER:

Q You are referring to some documents that were discussed in your testimony today?

A I am referring to a recollection I have that amongst the notes that I gave to them I would occasionally mention MCK for this or for that. What it was about I

don't recollect at that point.

Q You don't have any specific recollection of specific references right now to Mussen, Conger and Kagan?

A No, I don't right now. If I got all the documents again I would try to find occasional reference to them. But you have got anything that I have got.

Q Do you have any specific recollection now of any use by you of Mussen, Conger and Kagan in connection with your work on the book?

A I think from the beginning I might have used them to illustrate some of the ways I wanted the things organized.

Q Do you have any specific recollection of that?

A Yes. The document that you showed here before is an index of that.

MR. BERGER: I think you took it back.

MR. FOX: No. 35?

MR. BERGER: Yes.

Q Are you referring to Defendants' Exhibit 35 for identification (handing)?

A Yes. Here is an example. My problem in the beginning was to educate Julie to my conception of the organization. And what I wanted to do, as I said earlier, was have a tripartite organization derived originally in my mind from Erik Erikson's work and a book going all the way

back to 1951, Childhood and Society.

I had forgotten what was in her mind and how she wanted to organize. But she had ideas. Market research had given them some ideas and I don't remember what they were.

A sort of a contest went on sometimes and I said, look, this is how I would like to have it, we want a motor response chapter, a social cognition sort of chapter. The sort of things these chapters contained are listed below with reference to MCK so that you can get an idea of what these chapters should contain. That's an example of my use of MCK by me.

And if you look at the general material on the next page you will see how I am trying to orient the major foci for those chapters. That my problem is to have Julie understand why one should divide up the organism that way. There is nothing logical -- it has certain precedents and convention, but there is nothing necessary about it.

Different writers and different books divide up the organism in all sorts of ways. That was my way and how I listed the way items would go under chapters of that sort.

Q Did you use Mussen, Conger and Kagan in preparing any documents similar to Defendants' Exhibit 35 for

identification?

A I might have, but I don't recollect so doing.

This was a sort of -- if you look at the documents you will see this would be amongst hundreds of documents and materials that I gave her.

Occasionally I referred to Stone and Church, some of their concepts, too, which I liked, and so on. This was in my intention an illustrative part of her education. Why should that not be with motor development or why shouldn't language be with social development? It's a very social thing.

When you have made the division it can be seen why it is obvious, but not beforehand.

So in the documents I think there are occasional notes to MCK, but I think that's all there is, just occasional references.

Q Apart from the ones that you have just testified about can you recall any other use you made of MCK in your work on the book?

A As I said --

Q Your present recollection.

A I think there is another one or two of the documents, but I am not sure. It's my recollection that off and on I would refer to their book. But, in my head,

it's like about three times the whole documentary bit.

MR. NEWITT: Whole documentary what?

A Collection, aggregation of materials. In my recollection that was the only reference by me to them.

This partly may have met their needs because they were concerned with that book. I said this is my way of reorganizing. This is the way it will go.

Q Professor Sutton-Smith, have you ever authored another book that was prepared in a way similar to this one?

A No. This is my first experience.

Q Professor Sutton-Smith, at the time your book was published did you know the extent to which the writers had relied upon Hussen, Conger and Kagan in preparing their material?

A No. I had no knowledge of what the writers had done.

My assumption was they had followed by -- it was the input and it came out the other end and my assumption was that it was me and Carmichael mainly.

Q But you did not know whether or not they had relied upon Hussen, Conger and Kagan in preparing their drafts?

A No.

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B R I A N  S U T T O N  -  S M I T H, recalled as a witness, having been previously duly sworn, testified as follows:

MR. BERGER: Let the record note that the witness has been sworn and I am reminding him of that fact.

EXAMINATION

BY MR. MILLER:

Q Professor Sutton-Smith, when you testified last we were discussing, I believe, the perspectives --

A That's right.

Q -- of yours which you testified were incorporated in the book Child Psychology. You had stated that some additional review of your file might result in your providing additional testimony with respect to that matter.

Have you had an opportunity to review your files and review the book since your last deposition?

A Yes, I have.

Q Would you please review for me on a chapter-by-chapter basis your perspectives that were reflected in Child Psychology? It would be helpful to me if in doing this you could direct my attention and get on the record the particular parts of Child Psychology where that perspective is reflected.

A Right.

Q Would you --

A O.K. You asked me to look at my files again. I have done that. It was a matter of, for me, of recrudescing the assumptions, the matrix which I brought to this occasion.

It really is outlined quite nicely, if you would like to have a look at it, in an article I delivered in 1966 which took some time to come out (handing). It came out in 1970 but was actually delivered in the APA, I think it was here in New York, in 1966. And this article which was a critique of a Skinner-type presentation in a symposium, it took a long time to come out because some of the other chaps didn't get their papers written up and there was some problem of this sort -- this was a critique of a Skinner-type approach.

In making that a critique I set forth some propositions which really are the same ones which underly the book.

If you would like to look at the last page, page 259, in the conclusion in the last column of sentences it says, "I am trying to demonstrate what is widely granted by philosophers of science -- that it is incumbent upon a scientist to make as explicit as possible the presuppositions of the language community of which he is a member. To make these presuppositions explicit it is, of course, to set

limits on one's truth claims and to be forced to justify oneself on grounds other than those arising from one's immediate technology."

That is a constructivist sort of a statement.

Q That was the constructivist statement as you explained it?

A Yes. Now, on the first page, very first page in the middle paragraph just above "Developmental Laws" is what I would call a pluralistic statement.

It seems to me if you have a constructivist position then you are saying that each scientific endeavor has to be understood in terms of a man's assumptions, his values, his metaphoric model, his theory and how these penetrate into the methods he uses and the data and problems on which he focuses.

That's a constructivist statement. If you make a statement like that then you are in a relativistic assumption. Everybody has to be considered in terms of all their assumptions and, therefore, the theories of all the theorists have something to contribute. That's a pluralistic position.

My second perspective is pluralistic. "I am not of the opinion that scientific progress is determined by any single rule system. Rather, I assume that the various language communities" --

MR. BERGER: Excuse me, please.

(Mr. Berger leaves the room.)

A "Rather, I assume that the various language communities within the diverse and broad categories of development and learning are best judged by their own products. It is a paradox that such an eclectic and pragmatic view that one welcomes the methodological game that Dr. Baer is playing while contesting any universal philosophical claims on its behalf."

Now, in the synoptic outline of the book, of the textbook --

MR. MILLER: At this point, for the record, I would like to have this document marked as Defendants' Exhibit 68 for identification. I hand the reporter an article by Brian Sutton-Smith to which the witness was just referring in his testimony and request it, it being an article entitled "Developmental Laws and the Experimentalist's Ontology," and request that this be marked Defendants' Exhibit 68 for identification.

(An article entitled "Developmental Laws and Experimentalists's Ontology,"by Brian Sutton-Smith, was marked Defendants' Exhibit 68 for identification, as of this date.)

A My next step was to indicate that in the synoptic outline for a test in child development, which was a part of the material I had in the big boxes I had access to, I made statements of similar import, perhaps a little bit more explicit.

I say there, "A major trend in current psychology is the introduction of an adequate philosophy of science orientation. The point of view to be taken in this work is that data is always conceptualized in terms of some theoretical framework, even though that framework is often a matter of metaphorical assumption rather than explicit proposition. In these terms the various approaches to developmental psychology, whether of naive realists, maturationists,psychoanalysts, social learning theorists, or organismic developmentalists, can be viewed as the discussions of scientists working within specific 'language' communities. Each of these theory languages tends to do a better job in focusing on some types of data, in comprehending certain ranges of data, and in predicting certain data outcomes than do the others. The problem for an overview is to find out what it is for which each theory language is particularly appropriate. What do they each do best? The assumption is that they are all correct in some way."

And I could go on but that gives you the essentials.

MR. LANKENAU: May we have the document from which you have been reading?

THE WITNESS: This is my original prior to the typed one that went to the firm. You have a copy of this stuff already submitted in interrogatory.

MR. BERGER: I don't know if they Xeroxed that.

MR. LANKENAU: This will be marked and returned to you.

THE WITNESS: There is another statement here first, O.K.?

BY MR. MILLER:

Q Out of the memorandum you are reading from?

A Yes. There are many things in here but there was another one I wanted to see here.

I see on page 8 of this synopsis, "The discussion of scientific methodology, therefore, needs to separate out questions which have to do with the suitability of certain methods for certain types of data, from the proclivity that certain theories have for certain types of method. Method is not merely a matter of convenience in all cases. It is a marriage with theory."

That's the constructivism alliance with method, a very important point I wanted to make.

MR. LANKENAU: Will you please pass over the document from which you have been reading so that this may be marked as Defendants' Exhibit 69?

THE WITNESS: All right.

MR. LANKENAU: What you are handing to the reporter is the document from which you have been reading; is that correct?

MR. MILLER: This is a --

THE WITNESS: It's not the one actually handed into Julie, I am sure, but it is the one from which the typed copy was made. That was my original, my own typing.

MR. MILLER: This is a ten-page document entitled "Synoptic Outline for a Text in Child Development," by Brian Sutton-Smith. It is the document from which Brian Sutton-Smith was reading in his recent testimony.

I hand the document to the reporter and request that it be marked Defendants' Exhibit 69 for identification.

(A ten-page document entitled "Synoptic Outline for Text in Child Development," by Brian Sutton-Smith, was marked Defendants' Exhibit 69 for identification, as of this date.)

A There are a lot of other assumptions in there which I will be speaking of. You don't want me to read the whole thing, do you?

BY MR. MILLER:

Q No. What I am asking you to do is focus on the perspectives.

Professor Sutton-Smith, was this the document that you referred to in your testimony at the last session of the deposition? Did you make reference to this synoptic --

A I did.

Q As a document that you had submitted to some other publisher?

A Yes.

Q Who was that publisher?

A Wiley.

Q You submitted that to Wiley?

A Yes.

Q When was that?

A It would be the spring, I guess, of 1971. When did we start writing the book, 1971?

Q The spring of 1971 it was submitted to Wiley?

A I think that was it, yes. That's right.

Q Who at Wiley did you submit it to?

A Jordan.

Q Who is he?

A He was at that time the editor of their, I think it was their education division. I published two books with him previously and knew him well.

Q O.K.

A What I have been doing with the article, and the brief reading from the synopsis is to not go on for three hours on it but just to give you a brief definition of constructivism and in how my mind it leads to pluralism, the concern with many theories.

What that implies is that you are concerned with the way in which all the theories and the variables upon which they focus, whether they are focusing on learning or cognition or morality or whichever, the theories and the variables on which they focus; my concern is the way in which they all contribute to our knowledge of development.

There are two ways of looking at this. One has to do with methodology; that is you are concerned with how they contribute to the variants, the variants in predicting a particular outcome. That's simply a statistical concern.

But you are also looking for ways of describing, quite apart from predicting, how each coming at the same problem gives different sorts of answers descriptively. I sometimes refer to this concern as an interactionist concern.

I have given you three key terms so far: constructivism, pluralism and interactionism.

Q Would you describe interactionism again?

A I have actually given you two ways of looking at it. One is the statistical --

Q Is that part of interactionism?

A It's a methodological. What you try to do is work out what you think each theory is contributing to the understanding of a problem. You do this in a descriptive way through observation or whatever. Then you try to quantify the variables involved and put them to a statistical test to see what they actually contribute to the variants of a particular outcome.

You might find that cognative contributes ten percent, learning measured contributes fifteen percent, for example.

Q Could I restate what you have just said and perhaps you can correct me if I am wrong?

In using the term interactionist thesis you are referring to the fact that in evaluating any of the many theories that might explain child development or child behavior there are two methodological steps, and one step is to describe the theory and the second step is to try to, in a scientific way, use the theory to make predictions?

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A You would be a little bit more exact if you said describe the variables deriving from the theory. Then the second step is to quantify those variables, subject them to a test in a particular circumstance.

Q Describe the variables and quantify the variables?

A Right. And the second step is to quantify and put them to a test.

Q Both of these steps are what you referred to as an interactional thesis?

A Yes. It's not the only way in which interaction is referred to but it's the way I had it in mind.

One more brief statement and then I will get to the book.

"Within pluralism there are the theories."

There is an attempt to do justice to them on my part to the various theories. I give them a role in the book to understand how they contribute.

MR. LANKENAU: Are you reading from something, Dr. Sutton-Smith?

THE WITNESS: I have some notes but it's not what I am saying. This is just sort of a summary to present this to you.

MR. LANKENAU: May we have that marked, please, as Exhibit 70?

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MR. BERGER: Certainly. As I understand from Dr. Sutton-Smith, these we previously inspected--

THE WITNESS: Not this one. I have made this up in preparation for today.

MR. LANKENAU: Let it be marked as Exhibit 70. Just hand it over and then you can continue reading from it or using it.

Will you state on the record whenever you read from it?

(Continued on next page.)

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THE WITNESS: All right. I am not really reading from it at all.

MR. BERGER: He was using it to refresh his recollection.

THE WITNESS: It's like notes for a lecture.

MR. BERGER: I think the best way to describe it is notes, and how many pages it is.

MR. MILLER: The reporter has been handed a document which is sixteen pages in length, the first page is entitled, "Perspectives in SS Book," and the succeeding pages each appear to refer to a different chapter, I presume, of Child Psychology.

THE WITNESS: Yes. They just go through the chapters.

MR. LANKENAU: Was this prepared between the time of your last deposition and today?

THE WITNESS: Yes.

MR. MILLER: I request the reporter to mark this document Defendants' Exhibit 70 for identification.

(A sixteen-page document entitled, "Perspectives in SS Book" was marked Defendants' Exhibit 70 for identification, as of this date.)

A What I am saying is that the pluralistic stand implies a concern with various theories including learning theory and Piaget, Werner, Erikson and psychoanalysis in general. Those were the main ones that I was concerned to say something about in this book.

Well, that's the sort of prelude. How I can get into the book, if you like.

MR. MILLER: Fine.

MR. LANKENAU: I would suggest that we have this copied so that while you are answering the further questions we will be in a position to follow it more easily than if it is not in front of us. So I will step out and arrange to have that copied so we can each have it in front of us.

(A recess was taken.)

(The proceeding reconvened with all parties present.)

BRIAN SUTTON-SMITH, resumed, having been previously duly sworn, testified further as follows:

BY MR. MILLER:

Q Professor Sutton-Smith, did you testify about pluralism in your testimony at the last deposition?

A I don't recollect. It's a sort of a -- you must remember that you were asking me off the cuff what I thought my perspectives were when I started doing the book and I did the best I could off the cuff.

But now I had a chance to look at my own synopsis subsequently and my own notes subsequently.

Q Was pluralism one of the main perspectives of your bock?

A Necessarily yes.

Q Was it one of the three main perspectives of your book?

A Let's get this very clear. You asked me what presuppositions or what perspectives I brought to the book, and that's what I am talking to. We will then get into the book to see how they influenced the book. But I am talking about my presuppositions, my perspectives.

Q I was asking you if you had testified about pluralism in the last session of your deposition.

MR. BERGER: The record when it is typed up will show what the Professor testified to. If there is any variance on his testimony I think he has explained the reasons for the variance.

A You have to realize I have done a lot of work since then, as the record indicates.

Q Did you testify about interactionism in your testimony?

A No. I am sure I didn't testify about that. I am a little vague on whether I mentioned the pluralistic thesis or not.

Q Is pluralism along with constructivism one of the two basic approaches that you followed in the book?

MR. BERGER: I think you should ask him if there are three main approaches. Let's establish how many basic approaches there are.

A My terms for this would be, following your instructions last time you asked me what perspectives did I bring to the writing of this book. These are the perspectives that I brought to the writing of this book. That's what I am answering.

Q Is it your testimony today that constructionism is one of the principal perspectives?

MR. BERGER: Constructivism.

A Yes. It is one of the principal perspectives that I brought to the writing of this book.

Q And pluralism is also one of the principal perspectives that you brought?

A Yes. Right.

Q But you did not mention that in your testimony

last time; is that correct?

MR. BERGER: On what he testified last time the record will speak for itself. The witness has attempted to explain any discrepancies between the last session and this session.

Q Is interactionism also one of the principal perspectives of this book?

A I brought to this book, yes.

Q You did not testify about that at the last session?

A Didn't mention it last time, no.

Q You testified that you had a conversation early in the development of the Child Psychology book with Joan Winer Brown and Julie Small; is that correct?

A Yes.

Q At which you gave them a lecture as to your principal perspectives to the book?

A Yes. Where there was a discussion of the approach to the book, yes.

Q Did you mention constructivism during that discussion?

A I might not have but the notions that derive from constructivism might have been mentioned. And those notions are the ones that I read to you out of this article.

* * *

* * *

explicitly expounded such.

Q Has he expounded a theory that you believe is the constructivist theory?

A I put a constructive interpretation on his theory. And I derive that procedure from Kaplan.

Q Has this theory been set forth in scientific articles?

A Werner is a very famous developmental psychologist and he has a book called, The Comparative Psychology of Mental Development. He has another book called, Symbol Formation and I would say that either of those might be interpreted as constructivist.

Q That is where you said that he has expounded a theory which some believe is a constructivist theory?

A Now you have put it correctly. Thank you.

Q And that theory is contained in the two books that you have referred to?

A His theories are contained in the two books and some other people are of the opinion that one can say they are constructivist theories. Those two books don't say specifically avowedly this is a constructivist theory.

Q Professor Sutton-Smith, you may continue your view.

A Okay. Now, I was saying that the -- and I want to

add, the chronological organization of the book is much influenced by Piaget's notion of cognitive function.

The subdivisions within sections is much affected by the Eriksonian distinction between organism, person and society.

Q Would you explain? You had referred to organization within sections. Would you explain what you are referring to?

A Well, if you take the Section 3 where you get to the chronological part of this book.

Q Section 3 on infancy?

A Yes. Right. That's a breakdown following the tripartite of Erikson: Organism, person, society; chapters 5, 6, 7.

I was influenced by Erikson in establishing that distinction, those distinctions.

Q Professor Sutton-Smith, we have identified Defendants' Exhibit 69 for identification which was the synoptic outline which you submitted to Wiley & Company.

A Yes.

Q Is the breakdown between organism, person and society found in the synoptic outline?

A This I am not sure. You have to remember that this was done for another purpose, although it was also

contributed to Appleton-Century to indicate my type of thinking.

Q What was the purpose of preparing the synoptic outline?

A To engage Jordan in the possibility of writing a text in developmental psychology.

Q Do you have the document, Defendants' Exhibit 69 for identification?

A Yes.

Q Does it contain the kind of breakdown or suggest the kind of breakdown that you were referring to?

A I am not sure. It may not.

(Perusing) No. It has more details. It doesn't break it down that way there.

MR. BERGER: You are referring to Page 4?

THE WITNESS: Page 4. That was something I apparently worked on subsequently.

BY MR. MILLER:

Q Did you send a copy of this synoptic outline to Julie Small?

A Yes. I do believe I did.

Q Was the purpose of that to compare your overall approach?

A Yes. My assumptions, type of thinking about the

field, and so on.

All right. Let's go to Chapter 1.

In Chapter 1, which is on Page 3, I begin by making the point that to think about developmental psychology we have to begin with our naive beliefs about children. And this is really the point of the first couple of pages.

Now, on Page --

Q Is that an idea that you communicated to Julie Small, that particular idea?

A Definitely.

Q Was that prior to the preparation of outlines?

A Oh, I don't know. I am not sure where it came, but it was one of my -- one of my concerns.

On Page 4, having illustrated the importance of our naive beliefs, I go on to make that explicit.

I say on the left-hand column at the bottom of Page 4, "However, it is these assumptions and beliefs that we must make explicit and that we must begin to question if we are ever to gain any hard, scientific knowledge about the nature of children. For, upon investigation, we may find that some of our firmest beliefs are certainly not true of children everywhere, and may not even apply to all children in our own society."

Let's see. On the same Page 4, I say in the paragraph "The First Task of Child Psychology:" "In order to be in a position to study the child with some degree of objectivity it is necessary to define terms and make explicit all of our hidden assumptions and beliefs about childhood." And so that paragraph continues along those lines.

If you look to Page 5 on the first column, last two paragraphs, I say, "But the task of achieving greater clarity and general agreement about what basically exists is even more complicated in the human sciences than in the natural sciences. Many more complex variables affect the state of man. Men's theories and beliefs about themselves tend to affect their behavior and character. Men -- and especially children -- become what they, and others, think they are.

"The effort to create a unified theory of child development, then, is bound to be a very difficult task. In a sense, it is attempting to say that there are no such things as 'children' at all."

That's a remarkable statement, by the way. Only a constructivist could make a statement like that.

"There is only the distorting lens of centuries of accumulated habits, beliefs, and myths which affect all

of our views of what children are. As we approach this new science from the starting point of our familiar notions -- exchanging myths for facts or finding factual bases for myths -- we need to examine what these commonplace beliefs are and what they have been in the past."

And the chapter proceeds along those lines.

Q Did you write that, Professor Sutton-Smith?

A Those are my ideas.

Q Did you write that?

A I might have typed out something like that. Whether I actually wrote those words is not in my knowledge because the writers wrote -- whatever.

Q The writers wrote the sections you are referring to?

A They wrote the drafts of the book, of all of the book.

But these are my ideas. Whether they were communicated by writing or by my talking to Julie --

Q Were they communicated to Julie Small before you received the first draft?

A Certainly, yes.

Q Were they communicated in writing?

A I think some of this was. But I am not -- you would have to look at the whole folders and stuff.

Q Professor Sutton-Smith, are the perspectives that you have just been reading important perspectives in the book?

A We are talking about my perspectives, aren't we? I think I will be able to show as we go along they are important perspectives in the book.

Q The ones you have just been referring to, do you consider to be among the important perspectives in the book?

A This business of analyzing assumptions and looking at theory and method as growing out of naive assumptions, theory -determining method and selecting problems and data, yes.

Q Did you put that in writing to Julie Small?

A I am not sure whether I did or not. But I certainly talked to her about this all the time.

Q This was one of the important perspectives, was it not?

A That's what I am saying.

Q Wouldn't you have, if it was one of the major perspectives of the book, put that perspective in writing to Julie Small?

A I think you will find it in the synopsis that I gave you earlier.

Q I am asking you for your recollection as to whether

or not you put it in writing.

A It's in the synopsis. She had an article that I gave to you earlier. It's in that article.

MR. BERGER: What is the article exhibit number?

THE WITNESS: What exhibit number was this one?

MR. LANKENAU: I think it is 68.

MR. BERGER: 68.

THE WITNESS: She would have been communicated with in this way.

MR. LANKENAU: May the record reflect that the witness was conferring with counsel?

MR. BERGER: He was not.

MR. McANDREWS: He was not.

MR. LANKENAU: You weren't talking to your counsel at that time, Mr. Sutton-Smith?

THE WITNESS: I made a comment to the world at large.

MR. LANKENAU: May we know the comment to the world at large?

THE WITNESS: Yes. We aren't going to get very far today, are we?

MR. LANKENAU: Was that your conversation?

THE WITNESS: Yes.

MR. McANDREWS: Partially due to the frequent conversation between Mr. Lankenau and Mr. Miller.

THE WITNESS: I did all this work here for you guys and let's get on with it.

MR. BERGER: All these discussions are interesting but I don't think that they are relevant to this matter. Let's go.

BY MR. MILLER:

Q Will you continue, please, with Chapter 1?

A All right. I have been talking about naive beliefs and their importance.

We moved to page 5.

Page 6 -- then what happens, there is the naive beliefs and then you go into historical discussion on 5 and 6, some of the historical origins of beliefs about children, and then on to the beginnings of assumptions about childhood, more explicit theories rather than just common sense notions.

On pages 6 and 7, for example, we have --

Q Professor Sutton-Smith, I don't quite understand whether you are telling me what is in the book, which I can read, or whether you are telling me about some perspective which you asked Julie Small to include in the book.

A That's what I am doing.

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Q Is it your testimony then that you asked Julie Small to include material on the historical overview?

A I was certainly interested in historical materials as one way of illustrating the development of assumptions about childhood, yes.

Q Again, I am not interested at this point in what you were interested in. I am interested in --

A I am sure --

MR. LANKENAU: If he could finish the question.

Q I am interested in your communications what it is that you caused to be included in the book by statements that you made to Julie Small concerning this matter.

A We have to be careful here, I think. One thing is my perspective and my recrudescence of my perspective from my notes in the books. That's one thing and that's what I am doing for you and can do.

The second thing you are asking is do I recollect specifically saying this or so to Julie Small. And that's almost impossible to recollect that much in that much detail.

I can be sure that I had this sort of emphasis that is to be found in these pages in talking to Julie Small. But only in those general terms.

Q Your testimony is that the material, for example, in

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an historical overview is a perspective of yours; is that right?

A Yes, sir.

Q But you cannot testify that that is something that you discussed with Julie Small?

A It's most probable that I did.

Q Do you have any recollection of discussing it with Julie Small?

A Not specifically. Look, we have got 600 pages to go through. I talked to her all the time, though.

And I would, for your interest, call your attention to the reading which you wanted me to talk about the other day and which we finally did, a reading on the same historical business that you are now asking a question about (indicating a book of readings).

Q I would like to see a copy of that.

A (Handing.)

Q Did you rely on Mussen, Conger and Kagan in developing your perspectives for Chapter 1 of the book?

A No, sir.

Q What?

A No.

Q You did not?

A No.

Q Are you sure about that?

A Very sure.

MR. MILLER: I hand the reporter a five-page document that has "Introduction" at the top and request that it be marked Defendants' Exhibit 71 for identification.

(A five-page document entitled "Introduction" was marked Defendants' Exhibit 71 for identification, as of this date.)

BY MR. MILLER:

Q Professor Sutton-Smith, did you prepare Defendants' Exhibit 71 for identification which I have just handed to you?

A (Perusing) I think I did, yes.

Q I believe that this came from the files of Professor Sutton-Smith.

Are these notes which you gave to Julie Small?

A Looks like they probably were, yes.

Q They say at the top "Theory and Method"; is that correct?

A Yes. Right.

Q Is that the same chapter that you have just been testifying about?

A Yes.

Q At the end of the paragraph 2 on the first page

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there is a reference to MCK pages 1 dash 4; is that right?

A Right.

Q What is MCK?

A Mussen, Conger and Kagan.

Q Were you in error, Professor Sutton-Smith, when you said that you didn't make reference to Mussen, Conger and Kagan?

A Apparently I was, yes.

Q In developing your methods and theories for Chapter 1?

A We should note, however, that all the other things that are said here -- and you might --

MR. BERGER: You answered the question.

Q Now, at the end of the next paragraph there is a reference to MCK pages 6 dash 12; is that right?

A Yes.

Q That is Mussen, Conger and Kagan?

A Right.

Q At the end of the fifth paragraph on that page there is a reference that I can't read clearly. It says MC -- is that right -- pages 17 dash 18?

A Yes.

Q What is that a reference to?

A It may well be them again, I think, I guess.

Q On the next page approximately seven lines down there is a reference to MCK, pages 23 to 27.

A Right. It would be the same guys.

Q That is Mussen, Conger and Kagan?

A Right.

Q Child Development and Personality?

A Yes.

Q In the next paragraph there are references to pages 12, 13 and 14.

MR. BERGER: Where is that?

MR. MILLER: Paragraph No. 6 on page 2.

MR. BERGER: Right.

Q What does that pages 12, 13 and 14 refer to?

A If we look at their book we can see if that corresponds.

Q Could you look and tell me whether it does or not?

A (Perusing) Yes, it does.

Q That is a reference to Mussen, Conger and Kagan?

A Yes.

(Continued on next page.)

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Q In the next line there is a reference to Pages 21, 22; is that right?

A Yes, right.

Q That is a reference to Mussen, Conger & Kagan?

A Yes.

Q Would you turn to the next page of your memorandum, please?

A Yes.

Q There is a statement, "Theories rest on more general assumptions ( hence concept of the child and historical background, Pages 3 dash 4.)"

A This will be Reese and Overton.

Q This is a reference to Pages 3 and 4 of Overton?

A I suspect it is.

MR. BERGER: You are referring to the last page of that exhibit?

THE WITNESS: Right.

MR. BERGER: Which is --

THE WITNESS: I infer this from the fact --

MR. BERGER: Looks like a Xerox.

THE WITNESS: Oh -- from the fact their name is on the top of the page here.

BY MR. MILLER:

Q Is there a copy of the Reese and Overton article?

A It was in the stuff that I gave you in the interrogatory. Yes. Reese and Overton, right.

Q Is Reese and Overton an article?

A Yes. It's an article on --

MR. BERGER: Isn't it the article referred to in the last page?

THE WITNESS: This thing you have given us here is the first page of the Reese and Overton article.

MR. BERGER: That is a Xeroxed copy.

THE WITNESS: Yes. It's been published since that time.

BY MR. MILLER:

Q What you are referring to in your testimony then is that the pages on this page refer to Reese and Overton; is that right?

A Yes.

Q And not to Mussen, Conger and Kagan?

A Yes, right.

Q Professor Sutton-Smith, isn't it true that you prepared these notes from Mussen, Conger and Kagan?

A Which notes?

Q The notes that you were just testifying about, Pages 1 and 2 on your "Theory and Method."

A From?

Q Yes.

MR. BERGER: Entirely or in part?

Q In large part from Mussen, Conger and Kagan?

A No. These represent my ideas. They are consistent with everything else I have been telling you this morning.

Q But you did refer one, two, three, four, five, six times to Mussen, Conger and Kagan; is that correct?

MR. BERGER: He referred to it the number of times that were testified to.

MR. MILLER: I am asking the witness.

MR. BERGER: He does not need to repeat that. The exhibit speaks for itself.

BY MR. MILLER:

Q Is it true, Professor Sutton-Smith, that in these two pages on "Theory and Method" that you gave to Julie Small there are six references to Mussen, Conger and Kagan?

MR. BERGER: They are the references that he has previously testified to.

Q Would you answer the question, please?

MR. BERGER: I don't think he needs to

answer what he has previously testified to.

MR. LANKENAU: Are you directing him not to answer this question?

MR. BERGER: I think it is getting to be oppressive, but I will let him answer.

A It looks like the number but I would have to count them.

MR. BERGER: It is subject to correction.

BY MR. MILLER:

Q Professor Sutton-Smith, I take it then that you had Mussen, Conger and Kagan before you when you prepared this document; is that correct?

A I must have at some time, yes.

Q And you had reviewed that portion carefully; is that correct?

A I must have read their book, yes. I had been asked to review it, you remember.

Q What was the purpose of referring Julie Small to these pages of Mussen, Conger and Kagan?

A I think to contrast what I wanted to do with what they were doing.

Q Did you accomplish that?

A This is only a part of what Julie got from me. There was an incredible amount of stuff.

Q You wanted to contrast the material in Mussen, Conger and Kagan --

A Not contrast. Just show what I was doing as compared to what they were doing.

Q Was what you were proposing something different from what they had?

A I think so.

Q Did you indicate that in the memorandum, Defendants' Exhibit 71?

A That's this one (indicating)?

Q Yes.

A No. I doubt if I did.

Q In any of the six places where you referred Julie Small to Mussen, Conger and Kagan did you indicate to her that you were citing her to Mussen, Conger and Kagan for comparison purposes?

A I don't think this thing stands by itself, this document. You have got to see all the other stuff I gave her and you will realize from that and from the way the books came out how the difference is.

Q I am asking you about in this document. Is there anything in this document where you indicated to her that you were referring her to Mussen, Conger and Kagan as a matter of comparison?

MR. BERGER: I think that could be answered yes or no.

A No, I guess. No. Not here, no.

Q There is nothing in this document?

MR. BERGER: He just said so.

Q Was not this a suggestion to her to use Mussen, Conger and Kagan?

A No, not really. I don't see it as such.

Q Is there anything in here that would indicate that she should not use Mussen, Conger and Kagan?

A It was never my intention that Mussen, Conger and Kagan should be used. They were a comparative text to be looked at critically, a competitive text to be looked at critically. That was always my assumption.

Q Is there anything in here that says that?

A No. But I said that many times to her orally. My recommendation was to go to the way I structured the book, which is indicated very clearly by the first chapter.

Q Your testimony is that you told Julie Small that Mussen, Conger and Kagan should be looked at for what purpose?

A You have to remember, I think from the previous deposition, that Mussen, Conger and Kagan were regarded as the critical competition or something and they asked

me to review it as the competition.

When I made up my instructions for this chapter I, in effect, showed them where I was and where they were. That's what this was.

Q The purpose of these references is to show where you are and where Mussen, Conger and Kagan is?

A Right. If you read the whole paragraphs --

Q Is there anything in the memorandum that so indicates?

MR. BERGER: That can be answered yes or no.

A Yes. I would prefer to begin with the anectodes that I sent you. I am showing that these are points of view in each of these paragraphs that you will not find in Mussen, Conger and Kagan.

Q You are showing that these are points of view that you cannot find in Mussen, Conger and Kagan?

A By and large, yes.

Q Would you tell me how you were showing that?

A Let's start at the beginning. I would prefer to begin with the anectodes that I sent you with which we raised the question what is it that child development studies.

Okay?

Q Professor Sutton-Smith, I am referring right now

to the first reference to Mussen, Conger and Kagan at the bottom of Paragraph 2.

A Okay. So that paragraph reads, "Why do we study children at all -- here we go into the discourses on the recent growth of developmental psychology, how it reflects the times, see previous notes and last pages of The Sibling," which is my book. "The focus being on our own attempt to increase cultural self-consciousness and the availability of alternative choices, therefore more control of life patterns. We are 'explicating' or unraveling the cultural union. What developmental psychologists have chosen to look at, of course, has changed over the years reflecting shifts in this cultural self-consciousness."

You won't find this view on the first pages of Mussen, Conger and Kagan.

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(Continued on next page.)

Q Were you told that Mussen, Conger and Kagan was a model book?

A Competitive book, I think.

Q Were you told that it was a model book?

A No. I was told that McCandless, Stone & Church, and Mussen, Conger and Kagan were the top books.

Q Were you never told that Mussen, Conger and Kagan was a model book from the research report?

A I never saw the research report. I certainly don't recollect that.

Q Professor Sutton-Smith, you are the author of this book, aren't you?

A Yes.

Q Would it surprise you to learn that the market research report prepared by Appleton-Century said that Mussen, Conger and Kagan was the model book?

MR. BERGER: What does --

A It depends what they meant by model book, I suppose.

Q If they meant that it was the model book in terms of contents, topic coverage and sequencing?

A I don't think I ever heard it quite that explicitly.

Q Did you hear it in some way that it was a model book?

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A As I said, McCandless, Stone and Church, and Mussen, Conger and Kagan were the three rival books.

Q You are sure that no one ever told you that it was the model book?

MR. BERGER: I think you have asked that question about four times in the past five minutes.

A To the best of my recollection.

Q To the best of your recollection they never told you that?

MR. BERGER: That makes six.

A No.

Q At the bottom of paragraph 5 you have a reference to Mussen, Conger and Kagan pages 17 and 18 which reads, "It is from these various roots that our theories" -- could you read that for me?

A "It is from these various roots that there are theories and there are methods" --

MR. BERGER: "Attempts to control the situation arise."

MR. LANKENAU: What is the rest of that, please?

A "What are the major theories."

Q Do you have a citation there to Mussen, Conger and Kagan?

A Yes.

Q What was the purpose of that citation?

A If we look at their pages we might find out. What do they say the major theories were?

We obviously didn't follow that because we have Werner and Cassirer.

Q What was the purpose of the citation, Professor Sutton-Smith?

MR. BERGER: Lister to the question.

A My recollection of this was that I was teaching them what I wanted, what I thought ought to be done.

Q In that process you were referring them to Mussen, Conger and Kagan?

A More by contrast with what I was saying. That indicated what they had and this document indicated what I thought.

Q Is there anything in paragraph 5 that indicates that comparison with what you were saying?

MR. BERGER: Is paragraph 5 only on that page or on the next page?

A Go on to the next page.

"And I want to have stressed here my view that such theories have historical roots (as above) Piaget from biology, learning from physical sciences; psychoanalysis from

both. And that they seem to help focus on parts of a large field. They are all microtheories no matter what their intention. Piaget has strength for discussing cognative structure; psychoanalysis for discussing conflict: learning for discussing controlled learning."

MR. LANKENAU: What about the citation? Aren't you missing something there, Professor Sutton-Smith?

Q Is there a citation there to Mussen, Conger and Kagan?

A What's on those pages? (Perusing) Well, I think what I am saying probably contrasts with what they have said there.

"Each theory is a verbal system that gathers its adherents around certain assumptions and certain data-gathering activities. While the adherents sometimes are magical about all this, all of us stand to benefit from their intensity if their work is scientifically testable."

So that's paragraph 5, anyway.

Q Professor Sutton-Smith, in paragraph 6 your sentence reads, "Here we go into a bit of methodology analysis, dash, the nature of science."

You then refer to pages 12, 13 and 14 of Mussen, Conger and Kagan.

A Yes.

Q What was the purpose of that citation?

A It's their outline of this comparable area.

Q Did you bring that to the attention of Julie Small?

A Through this, yes.

Q What are the different types of method in developmental psychology?

A Cross-sectional, et cetera.

Q Cross-sectional, et cetera, and you have another reference to Mussen, Conger and Kagan?

A That's where they go into that presumably.

Q What was the purpose of that citation?

A I am arguing about my point of view in this introductory chapter and this is only one of the documents which I used as a part of that argument. And I am making reference as to where they have their materials of the parallel sort that I am talking about.

Q Where in this memorandum is that indicated, referring to paragraph 6?

A I am telling you now. You asked me how this was used --

Q Where are the memoranda that this comparison with your -- where in paragraph 6 is the contrast to your approach

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set forth?

A "This brings us finally to method, and the fact that despite the inscrutability of child and instigator there has developed a very considerable consensus over the years on how to validate information."

Q Yes?

A That's my perspective there.

Q Then it says, "Here we go into a bit of methodology analysis."

A Yes.

Q Referring to Mussen, Conger and Kagan?

A They can be taken as illustrated for the sorts of things that we have to talk about. That's how that was used there.

Q When you said, "Here we go into a bit of methodology analysis," what was the purpose of that; to suggest that that was the next subject to be treated?

A Yes. That after you expounded the theory, the assumptions, the theory, the theory dictates the method and the method focuses on the data and you will find that in Chapter 1.

Q In that connection you referred to Mussen, Conger and Kagan?

A At that moment, yes.

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Q That wasn't by way of contrast, was it?

A In a way, yes, because the whole document indicates a quite different approach.

Q Referring to this particular sentence, that wasn't by way of contrast, was it?

A If you took the whole document it is by way of contrast. You have to take it in the context of the whole document.

Q What were you suggesting when you said, "Here we go into a bit of methodology analysis"?

A Pardon?

Q What were you suggesting when you said, "Here we go into a bit of methodology analysis"?

A The methodology in developmental psychology.

Q When you referred to Mussen, Conger and Kagan, what was the purpose of that?

A Rather than have me write them all out at that point, you can sort of see what this whole methodology is going to involve when you get into a quick review in their book.

Q So that it could be incorporated into your book?

A Not necessarily at all.

Q Not necessarily?

A Not at all. You have to realize that my function

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was as an educator in this early stage. They didn't know necessarily the field.

Q In educating them you referred them to Mussen, Conger and Kagan?

A Apparently that was done here, yes.

Q Did you do it in other chapters as well?

A From time to time there are references to Mussen, Conger -- there are all sorts of stuff. Mussen, Conger and Kagan were one of the things used illustratively, yes.

Q Did you, in fact, refer frequently, refer Julie Small frequently to Mussen, Conger and Kagan in the course of the preparation of the book?

A What's frequently mean here? Are you talking like five percent, ten percent or one percent, or what?

Q How frequently did you refer her to Mussen, Conger and Kagan?

A One would have to guess. But if you think of all the references I gave her and the fact that my major interest was on Mussen, which is Carmichael Mussen --

MR. BERGER: That is the Handbook?

A Handbook, yes. My major emphasis throughout was to the Handbook, was the basic source.

I don't know. I haven't done a count. But maybe they were one out of twenty or something like that of all the references given.

Q Professor Sutton-Smith, you testified at the last session that you referred very little to Mussen, Conger and Kagan in the course of your work on the book; is that correct?

A Me personally, yes.

Q That was your testimony?

A It's the same question about frequency, isn't it?

Q I am talking about your own references to Mussen, Conger and Kagan.

A Yes. In the beginning we paid some attention to it because it was the competitive model. I had to pay more attention to it that Stone and Church because I had never used it. I knew Stone and Church and knew it backwards. McCandless I also didn't have to use because I knew it.

Q Why are there no reference to McCandless in this document?

A You will find some in the other parts of the book and files.

Q Are there any references to Stone and Church in the document you are testifying on?

A Not of this part, no.

Q Did they ask you to go to Mussen? Is that the

reason why you went to Mussen, Conger and Kagan?

A I was asked to review it, yes.

Q Were you asked to provide citations to relevant sections?

A No, I wasn't.

Q They didn't ask you to provide that?

A No.

Q What was the purpose of Defendants' Exhibit 71 for identification?

A To indicate my perspective on it.

You have to recollect not only this but the article on the end.

MR. BERGER: And you are referring to the Reese and Overton article?

THE WITNESS: Yes.

Q This was a perspective to be incorporated in the chapter outline?

A In my opinion this was the best single source for understanding, approaching theory in developmental psychology.

Q And Defendants' Exhibit 71 for identification was perspectives to be included in the chapter outline?

A It's first thoughts. These are not -- well, you can sort of see the parallel between these ideas and the

ones I have given you earlier today.

MR. MC ANDREWS: Just a moment. Doctor, a moment ago you said, "In my opinion this was the singlemost important source," or something. And the court reporter doesn't know what you mean by "this."

THE WITNESS: Reese and Overton.

MR. BERGER: He was referring to the Xerox of the first page of Reese and Overton, the last page of Exhibit 71.

THE WITNESS: Mind you, I should say that all the Reese and Overton is is an explication writing out about all the ideas I have always had about the field.

What I was, in effect, doing with Reese and Overton is showing that in having these points of view I wasn't completely mad; there were others in the field with a similar way of looking at it.

BY MR. MILLER:

Q Is Reese and Overton referred to in Chapter 1?

A I don't know. I doubt it. I remember they had a hard job of understanding it.

There is a note on the bottom of mine to Reese

and Overton somewhere here. I say, "Your writer must make sense of this material in a simple way. This is the best modern stuff and there is no way around it."

Q Is there any reference to Reese and Overton in Chapter 1 of the book?

A I don't know. Maybe, maybe not.

Q Will you check?

MR. BERGER: I can state that there is not.

Q There is not?

A What I had to do with them is justify my approach to this book, and Reese and Overton is the best justification.

Q Isn't it your testimony that you were providing Reese and Overton as the best statements of this point of view?

A Apart from my own, yes.

Q How long was the Reese and Overton article?

A It's a big thing about twenty, thirty pages.

Q Was it relied upon in preparing Chapter 1 of the book?

A Either they or me. Chapter 1 sounds more like me. Reese and Overton, they are essentially the same sorts of points of view. But they are very abstract and very academic. I remember protests about how difficult it was

to understand it.

Q Isn't it the practice when an article is referred to and relied upon in preparation of a chapter that it is cited in the book?

A If they finally did. You are asking me what I gave them.

I told you I gave them this as the best academic statement of what my point of view was. It was as much a justification of my point of view as anything else.

Q Did you express your point of view in any other form for Chapter 1 other than this Defendants' Exhibit 71?

A Yes. There is other stuff in my notes and the interrogatory. If you did your homework. There is a whole lot of stuff, piles of stuff about history and background, and so forth, that they had available.

Q Do you recall any other notes on Chapter 1?

A By me?

Q Yes.

A Yes. And they were all provided in the interrogatory. I gave you everything I could recollect having used.

Q What other notes?

A About historical background, scientific development, the development of science, methodology. Lecture

notes of mine they were mainly, piles of it.

MR. LANKENAU: At your next session of the deposition will you bring those documents from your files?

THE WITNESS: Yes. Right.

MR. BERGER: I think that documents other than the previously published materials you have made Xeroxes of.

THE WITNESS: The other stuff has been Xeroxed by you, by the way.

MR. LANKENAU: Off the record.

(A recess was taken.)

(The proceeding reconvened with all parties present.)

B R I A N S U T T O N - S M I T H, resumed, having been previously duly sworn, testified further as follows:

MR. MILLER: I hand the reporter a document, single-page document headed "Learning" and request that it be marked Defendants' Exhibit 72 for identification.

(A one-page document headed, "Learning" was marked Defendants' Exhibit 72 for identification,

as of this date.)

BY MR. MILLER:

Q Professor Sutton-Smith, is Defendants' Exhibit 72 for identification a document that you prepared (handing)?

A (Perusing) It looks like my stuff. Yes.

Q Did you provide a copy of that to Julie Small in connection with the "Learning" chapter?

A Yes. I think this was a piece to accompany the article by Stevenson from the Handbook. Yes.

Q Along with this you sent a copy of the Stevenson article?

A Yes. Right.

Q That was for her use in preparing the outline?

A I believe so, yes.

Q You said that, "The outlines below mix what you had with Stevenson"?

A Yes.

Q Do you see that?

A Yes.

Q What was it that Julie Small had -- had she given you something in connection with Chapter 2?

A I am not sure what that means. It might have been something I gave her before. I don't recollect.

Q Do you recall what it referred to?

A No, I don't.

Q At the beginning of that --

A There is a sheet here, "Plus my sheet entitled 'Perspective.'" Maybe it was that, whatever that was.

Q What are you referring to?

A In the "Introduction," three lines down, it says --

MR. BERGER: "Plus my sheet entitled 'Perspective.'"

A Maybe that's what was referred to on the fourth line. I am not sure, though. I really don't recollect.

Q Do you recall that Julie Small provided you with an outline of Chapter 2?

A No.

MR. BERGER: I think that is an ambiguous answer.

Do you recall her not supplying you with an outline, or do you have no recollection of whether or not she did it?

THE WITNESS: I have no recollection that she did.

BY MR. MILLER:

Q In the first paragraph you suggested that the chapter be called "Learning" and that the concept of development be left out; is that correct?

A Apparently at that time I did, yes. Later I know I changed it.

Q Was that concept followed?

A No. I must have changed my mind later because I emphasized having development in there later.

Q Is that reflected in the memorandum or a writing to Julie Small?

A I think I sent her Piaget's -- had a thing on development and learning and I believe I gave her that as a part of the argument that development is larger than learning.

There are conflicting points of view as to whether development is really the name for the results of learning or whether development stands for other things, not just learning, such as maturation, Piaget's distinctive concepts. And that's in the end of Chapter 2.

This is apparently an earlier stage where I hadn't got to that as yet.

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(Continued on next page.)

Q What was the idea, Professor Sutton-Smith, of suggesting the separation of learning and concept of development?

A What is the idea?

Q Yes.

A Well --

Q What was the reason for this suggestion to be made, that learning and development be separated?

A I can't remember that time. This is not what I ended up with, I know. So I am not sure where I was going to put development at that time. But the concept of development is a very important one to me.

Q Was it your testimony, your most recent answer, that it would be a Piagetian concept to include learning and development together?

A I am sorry. Make that a question. What is the question?

Q The question is was it your testimony that it was a Piagetian concept to include learning and development together.

A It's my testimony that Piaget makes learning subordinate to development. That's what I mean by what I said. Piaget has quite a different view than has been fairly orthodox in psychology.

Q You provided Julie Small, you testified, with some additional material on Piaget; is that correct?

A Yes. Sure.

Q It was because of that additional material that learning and development ended up being treated together in the same chapter?

MR. BERGER: I don't think he testified to that.

Q Was that your testimony?

A There are two questions there. One, did I supply her with material on Piaget. Yes.

Is that the reason this chapter came out learning and development? I am not sure about that. I really can't recollect. The concept of development is very important to me so we ended up with it in the one chapter.

There are other possible ways of organizing it into the book. But the way we ended up was with it in the first two chapters of theoretical considerations which is where it had to be.

Q Are you aware that Mussen, Conger and Kagan treated the two subjects together?

A Did they? Maybe they did.

MR. BERGER: Chapter 4.

A (Perusing) I am sure they defined development

differently than I defined it there.

Q But they did treat the two subjects together; is that correct?

A I see the name on the chapter there, yes.

Q How does their definition of development differ from your definition of development?

A I would have to check out that book again to make sure.

(Perusing) But theirs wouldn't have -- I mean my main point would be that theirs wouldn't have the Piagetian emphasis that is provided in my book. Whatever else they did with that, they would lack that.

MR. McANDREWS: Let the record show that Professor Sutton-Smith is now paging through the Mussen, Conger and Kagan book looking for the relevant chapter.

A They don't have a subheading "Development." There is a chapter title "Learning and Development" but there is no subheading on development. So where is it they say something about development?

It doesn't look from the index that they say anything about development in this chapter except have the name. But there may be something here somewhere. You will have to find it for me. I don't find any reference to development in

there. It may be there but I can't find it.

Q Professor Sutton-Smith, is there a subheading in your chapter on development?

A There is an important section in the end on development.

We get towards the end of the chapter toward Jean Piaget's -- cognative learning is the subheading.

MR. BERGER: Page 43.

THE WITNESS: Yes.

Q Where does it end?

A Chapter 2, "Learning and Development."

Q What is the beginning and end of the section that you are referring to?

A "Cognative Learning." Then we get on to -- it's in that section. Then you have the Piaget "The Need to Know" and the most important statement is the last paragraph in the chapter.

You will see their rationalization for the treatment of the thing as learning and development.

The last paragraph of page 49 reads, "While this chapter has dealt primarily with learning, we have entitled it 'Learning and Development.' As used in this chapter, the word 'development' refers to the results or effects on the organism of many learnings over a period of time. However,

this is only one use of the term 'development.' It is important to emphasize that development is much more than the effects of learning alone. We have already discussed the important role that maturation plays in development. The genetic influences on development will become clear in the next chapter. And having introduced Piaget we must argue further that development is more than the sum of genetics, maturation and learning. Piaget would contend that development involves more centrally the organism's struggle to bring all these forces into some equilibrium. Thus, development precedes learning for Piaget. From our point of view it is clear, then, that learning is a more specific term than development. The latter is a broader term and this book is devoted to its many meanings."

MR. BERGER: That is quoted from your book?

THE WITNESS: That is correct.

Q Is that something that you wrote, Professor Sutton-Smith?

A I would think I probably did.

Q You wrote the first draft of that paragraph?

A I suspect I did. I could have. I am not sure whether I wrote a first draft or whether I added it to a galley or whatever.

Q Was this a paragraph that had been originally

written by a professional writer?

A I suspect that this is a paragraph original with me.

Q Professor Sutton-Smith, referring again to the Defendants' Exhibit 72 for identification, under "Introduction" to No. 1, what was the purpose of Defendants' Exhibit 72 for identification?

A It's mainly an outline of Stevenson's treatment of learning. The different issues.

What I liked about Stevenson was that he dealt with learning and childhood and his was the most recent review article and struck me as a good source.

Q What was the purpose of providing -- this was provided to Julie Small?

A Yes. These were some of my ideas of the things that I felt probably should have to be considered. But just Stevenson is here, as I recollect.

Q Was the purpose that Julie Small would use this memorandum in the preparation of Chapter outlines?

A I suppose so.

Q Do you know whether she did use this memorandum in the preparation of chapter outlines?

A I am not sure whether she did or not. I would have to see the chapter outline.

Q Did you see the chapter outline?

A I don't recollect. Is it available now? I am not sure that I have seen this one.

Q Had you seen the chapter outline at the time of preparation?

A Not at the time, no.

Q In the first paragraph you have referred to, "The distinction between learning and the unlearned. The distinction between learning and development. What learning is Mussen 90-100; what it is not Mussen 101, plus my sheet entitled 'Perspective.'"

Was that a reference to Mussen, Conger and Kagan?

A We would have to check the pages. It's either that or the Handbook, and see to which the numbers are relevant.

I intended to use the word "Mussen" for the Handbook so I would have to check the Handbook to see. It's either the Handbook or MCK, one of the two.

Q There is an item that says, "What it is not Mussen 101."

Would you refer to page 101 of Mussen?

A (Perusing) That looks like MCK, yes.

Q Are these references then that you were giving to Julie Small, these are references to Mussen, Conger and Kagan?

MR. BERGER: Just the 101 that he testified to. He testified he is unaware of 90 to 100.

(Continued on next page.)

BY MR. MILLER:

Q Professor Sutton-Smith, what is typed on Defendants' Exhibit 72 for identification? It reads, "What learning is Mussen 90-100."

Is there a reference to what learning is on Page 100 of Mussen, Conger and Kagan?

MR. BERGER: There is.

A Yes. Right. On Page 100 there is.

Q In the references to what learning is and what learning is not, were you referring Julie Small to Mussen, Conger and Kagan?

A It looks like it.

Q What was the purpose of doing that?

A Familiarize herself with the issue, I guess.

Q Did you expect her to rely on that in preparing Chapter outlines?

A Apparently not. "Sheet titled 'Perspective,'" not entirely that, no.

Q Did you expect her to rely partly on that in preparing her chapter outlines?

A Probably. I am not sure, really.

Q Did you ever ask Julie Small how they prepared the chapter outlines?

A I suppose we talked about them. My assumption

would be that it was from the material I provided plus they had researchers preparing other stuff. It was to be an amalgam of materials from me and the researchers and the latest editions of the journals and stuff.

Q Did you ask Julie Small to herself prepare outlines of Mussen, Conger and Kagan?

A No.

Q Do you know whether or not she did prepare outlines of Mussen, Conger and Kagan?

MR. BERGER: When? Obviously he was here at a deposition in which that information was elicited.

Do you mean whether he knew this before the start of the litigation?

Q Did you know before the start of the litigation that Julie Small prepared outlines from Mussen, Conger and Kagan?

A No.

Q Did she ever discuss that with you?

A I don't recollect so but she might have. It's not my memory that she did.

Q What is your best recollection of everything that Julie Small told you concerning the preparation of chapter outlines?

A That it was a putting together of what I told her and the work that the researchers had done and her reviewing all the competitive texts in the field, and so on.

Q Having referred Julie Small to Mussen, Conger and Kagan did you check the first draft of the manuscript when it came back to make sure that there had been no plagiarism?

A No, I didn't.

Q Did you ever check first drafts against Mussen, Conger and Kagan?

A No.

Q You never did?

A No. Well, on the one occasion I told you. That wasn't a check so much as I knew that there was their material.

Q You knew that was their material?

A Kagan's material.

I should say perhaps that I did ask her about plagiarism. You didn't ask me that question but I will volunteer it.

Q When did you ask her about plagiarism?

A I said what would be the possibility of plagiarism. And this was early in the preparations.

She pointed out that all the writers took plagiarism contracts just as I did.

4 Sutton-Smith

MR. LANKENAU: You took a plagiarism contract?

THE WITNESS: A contract which said that they would -- the same contract as me, that they were responsible for not plagiarizing.

MR. LANKENAU: When was it described as a plagiarism contract to you?

THE WITNESS: Nobody described it as a plagiarism contract to me.

MR. LANKENAU: That was your own idea now?

MR. BERGER: Let's have one examiner at a time, please. Mr. Miller is conducting the examination.

MR. LANKENAU: Would you please answer my question and I will ask no more questions at this time?

When was it that you first got the idea to call that a plagiarism contract?

THE WITNESS: Right now.

BY MR. MILLER:

Q When, as best you recall, did that conversation take place?

A It would have been early. In the first times -- you asked me a question that led to that. What was your

question again?

Q I have asked you whether or not you did any comparison of the first drafts when they came in against Mussen, Conger and Kagan.

A And the answer to that was no.

Q To insure that there was no plagiarism.

A That's right. I had asked her that question.

Q At what point early in the development did you ask her this question? Could you tell me?

A It would be in the first few months, I suppose.

Q Was there some occasion which led to that conversation?

A No particular occasion. I discussed all things with Julie in the first months or so. I mean I worked with her. We were on the phone a great deal.

Q Tell me everything that you can remember about that conversation with Julie Small.

A It would be early in the case where I am saying something like I am the author and I give you the stuff and you do the other research and you put it together and then the writers write it; how am I safeguarded against the writers putting in stuff that is not supposed to be there or copy somebody else, how am I safeguarded.

I was at that time told that they signed the same

6
contract which I did that made them responsible.

Q Was there any further conversation with Julie Small? Was anything else said about the subject other than you have testified?

A I don't think so.

Q Did you ask Julie Small about the qualifications of the writers?

A I probably did, yes.

Q What did she tell you about the qualifications of the writers?

A Some of them were graduates in psychology. Most of them had qualifications in writing. As I recollect, they are literary people.

Q Did you ask her whether or not they had degrees in psychology?

A I don't recollect it. I think that the people who were researchers had to have degrees in psychology, as I recollect, but the writers were literary in background, I believe. I think most of the people in the organization were literary. My understanding Winer Brown and Julie and these people, their skills were of literary character mainly.

Q Professor Sutton-Smith, what was your purpose in asking the question as you put to Julie Small?

A As I said, this had been the very early stages where you inquire into what you are getting into and what is the nature of it, and so on.

Q Were you worried about the subject of plagiarism?

A You felt a certain amount of anxiety, the writer. The first time I have been in the situation where I am not the writer.

But it wasn't an apprehension that lasted. This system went ahead and my fears were abated.

Q Did you recognize, Professor Sutton-Smith, that there was a danger of plagiarism?

A Yes. Sure.

Q What steps did you take to guard against it?

A The question that we have just dealt with.

Q The conversation with Julie Small?

A That's right.

Q Did you take any other steps to guard against plagiarism?

A No. I had no reason to think that there was anything to worry about once we got started, and so on. I felt that if the writers had signed a similar contract there was nothing to be concerned with.

Q Professor Sutton-Smith, doesn't the author have a responsibility to insure that there is no plagiarism in

* * *

MR. BERGER: Mr. Miller asked one question to which I objected. He tried to cure it. He didn't succeed.

Let him phrase one question and then we will see what happens. I suggest Mr. Miller set the record straight by asking one question and unless I have serious objections as to form, the witness will answer it. Mr. Miller will then decide whether he needs to follow it up.

BY MR. MILLER:

Q Professor Sutton-Smith, what do you consider the obligation of an author to be with respect to insuring that there be no plagiarism in a book which he has put his name on?

A He has to check to be sure.

Q You consider that the author's responsibility, to check to be sure that there is no plagiarism?

A Or to put it this way, to make sure there is some concern for this issue, right.

Q Do you consider it the author's responsibility to take active steps to insure that there be no plagiarism?

MR. BERGER: What do you mean by active steps?

Q Do you consider it the author's responsibility to

take some steps to make sure there is no plagiarism?

A Yes.

Q What steps do you consider that an author should take when someone else is writing a book which he is going to author to insure that there be no plagiarism?

A I think the question ought to be what steps did he take.

Q I am asking you what steps do you consider you had a responsibility to take.

A Well, I, as I said, checked with Julie as to what the status of the writers was. I receive reassurance that they had signed a contract, as I had signed a contract.

I then, of course, in all the galleys, read them all through and corrected them and criticized them. I was satisfied they were original materials.

Q How did you satisfy that they were original materials?

A I know the field fairly well. I have been teaching it for twenty years. It seemed so to me.

Q Did you do any checking as you were reading manuscripts or galleys to make sure that it hadn't been copied from Mussen, Conger and Kagan?

A That wasn't an issue in my mind. I mean that wasn't in my mind.

Q You did have an anxiety about it, did you not?

A Earlier in the piece, yes. When it first started.

MR. BERGER: I don't think he testified that he had anxieties with respect to Mussen, Conger and Kagan, but a general anxiety.

A Yes.

Q Did you at any time check the first drafts against Mussen, Conger and Kagan?

A No. Never.

Q Did you examine the first drafts carefully to see whether they gave indications of reliance upon other works?

A That was not in my mind. I wasn't thinking about it at that time.

Q If you had seen any indication of reliance upon Mussen, Conger and Kagan in the first drafts, would you have done something about it?

A Well, I did. There was such an occasion. We discussed it last time.

Q If you had seen other indications of reliance on Mussen, Conger and Kagan would you have done something about it?

A I did in the other case. This is a hypothetical question. I did in the one case where I was aware of what I thought was a parallel.

Q That is in Chapter 10?

A Yes. Right.

Q The section on problem solving?

A Right.

Q In that case was there a reference on the face of the manuscript to Mussen, Conger and Kagan?

A I don't think so. It was my awareness that that was their approach to problem solving.

Q In reading over the first drafts of the manuscripts did you notice any references to Mussen, Conger and Kagan?

A I don't remember that at all.

Q Would that have been something that would have been of concern to you in connection with the question of plagiarism?

A I wasn't -- you have sort of -- my concern when I got those drafts was writing them and making sure that the overgeneralizations were made clear. Mine was very much of an editorial job at that time. My focus was editorial at that time.

Q Did you read all the drafts carefully?

A Sure. Are you kidding?

Q Every word in the draft?

A Yes. As far as I recollect, yes, of course. It was an enormous amount of work.

Q Did you receive the drafts after your conversation with Julie Small?

A Which conversation?

Q The conversation in which you expressed some concern about plagiarism.

A Oh, it would be several months or a couple of months after, I suppose. Those we began somewhere there in November or December or whenever it was and that's when I would be talking about organization and anxieties or anything of that sort. And then it would be the whole business of chapters and getting them ready.

I am not sure when the first one came after that, but it would be a couple of months, six weeks at the earliest. I don't have the dates on those things. It was just continuous thereafter.

And then there would be the recycling of the second draft and finally the galley with stuff coming in and out all the time.

Q Did you read the second drafts carefully, also?

A Yes.

MR. MILLER: I hand the reporter a document entitled "Infancy" and request that it be marked Defendants' Exhibit 73 for identification.

(A one-page copy of a document entitled

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* * *

Q Now, in the first paragraph there is a reference to "See illustrations and 178." Is that correct?

A Yes. It doesn't make sense for either of these books. It could have been something else.

MR. BERGER: When you say either of these books, what do you mean?

A Handbook or MCK.

Q Are there any illustrations at page 178 of the Handbook?

A No.

Q Does the Handbook contain any illustrations at all?

MR. BERGER: Illustrations has two meanings. I can write an example of child behavior and that is an illustration for a particular thesis. It does look to have some illustrations.

Q What does "M178" deal with?

A I really don't know now. It should deal with something about Piaget there because I was talking about Piaget. It says, "See illustrations," and there are some illustrations of Piaget, but I am not sure where. Somewhere.

MR. MILLER: I hand the reporter a two-page document entitled "Notes on the Adolescent Chapter," and request that it be marked Defendants' Exhibit 74 for identification.

(A two-page document entitled "Notes on the Adolescent Chapter," was marked Defendants' Exhibit 74 for identification, as of this date.)

BY MR. MILLER:

Q Is that a document that you prepared, Professor Sutton-Smith?

A (Perusing) Looks like it.

Q Did you deliver it to Julie Small?

A As far as I know.

(Continued on next page.)

Q What was the purpose of delivering this document to Julie Small?

A To give her some of my ideas on adolescence, apparently.

Q To give some of your ideas on --

A It says in the beginning, "See my notes," so she obviously had something else.

Q Do you know in the last paragraph it reads, "Mussen, Kagan and Conger's material is pretty adequate but could be condensed except for cognition which needs enlarging and that can come from Oppen and Ginsburg"; is that right?

A Did you read it correctly? What are you asking me?

Q I am referring you to that particular portion.

A That's right. I read it the way you read it.

Q What was the purpose of referring Julie Small to Mussen? Was Mussen, Kagan and Conger there and you were referring to the textbook?

A Yes.

Q What was the purpose?

A It's a critique on their material. It says "They have far too much on dependence-independence, sex, peers and probably too much on alienation, dropouts,

et cetera."

Q Is it your testimony yours is a critique of their material?

A Looks like it, yes.

Q You have also described that it could be condensed?

A Yes.

Q Is that a direction to Julie Small to in general use that material but condense it?

A Well, I can only say what it said here. It's a commentary on their material, yes.

Q Was it not instructions to Julie Small to use the Mussen, Conger and Kagan material but to condense it?

A I think you have to see that in light of the rest of the page and all the other suggestions that are made. One reference is made here. She has to look at all these materials in thinking about how the chapter is to be constructed. That's my comment on their particular material which is only one part on all this.

Q What did you mean when you said "Could be condensed"?

A That they had given too much exposure to those topics.

We didn't want an much exposure to the topics as

dependence, peers, et cetera, as they have.

Q Wasn't that an instruction to Julie Small to condense the Mussen, Conger and Kagan material in a book to be published?

A I don't think in the way you are putting it, no.

Q What was the purpose of that statement?

A As I say, she is being asked to look at a number of sources and these sources indicate variety of materials and this is a comment on that particular source.

Q Professor Sutton-Smith, we are inquiring as to the purpose of that particular comment as to Mussen, Conger and Kagan.

MR. BERGER: He has answered that about three times.

A I saw it as a critique, myself, of their materials.

Q Professor Sutton-Smith, how could Mussen, Conger and Kagan be condensed except as in the process of writing your book?

A That's a statement about the length of chapters, and so on. There is too much material.

Q Professor Sutton-Smith, would you turn to the second page of this exhibit? Under "physical" there is a reference that seems to read, "MCK."

A Yes.

Q What was that a reference to?

A Mussen, Conger and Kagan, I guess.

Q Is the material that follows a condensation of Mussen, Conger and Kagan?

A It might well be. Some of it might well be, I would have to put it that way.

MR. MILLER: I hand the reporter a one-page document entitled "Cognitive and Symbolic" and request that it be marked Defendants' Exhibit 75 for identification.

(A one-page document entitled "Cognitive and Symbolic," was marked Defendants' Exhibit 75 for identification, as of this date.)

BY MR. MILLER:

Q Professor Sutton-Smith, did you prepare this document?

A (Perusing) I think so, yes.

Q Did you deliver a copy of it to Julie Small?

A I guess so.

Q In the fourth paragraph there is a reference to Piaget, 194 and 195.

A Yes.

Q What pages were you referring to there?

A That looks like it might be MCK. I am not sure. Go ahead.

Q Was that a reference to Mussen, Conger and Kagan?

A I suspect it is but I am not sure.

Q Is it your testimony that it is a reference to MCK?

A I can't be sure. I don't know what else it would be.

Q Would you look at the preceding paragraph that contains a reference to tables at Page 190 dash 91? Is that a reference to Mussen, Conger and Kagan?

A (Perusing) It probably is. I am not sure, but it looks like it. I don't know what else it is.

Q Is it your best recollection that all those page numbers are references to Mussen, Conger and Kagan? And I am referring to Pages 190 dash 191, 174 dash 175, 177, 156 dash 157, and 195 dash 196?

A I don't know what else it is. It could be something else but it looks like it could be MCK.

MR. LANKENAU: Would you please check those pages?

THE WITNESS: I did.

MR. LANKENAU: Are those pages pertinent to what you stated in that paragraph?

A They could be.

MR. LANKENAU: Are they or aren't they?

MR. BERGER: He said they could be and that is enough of an answer.

Q And this was a direction to --

MR. BERGER: Again, Mr. Lankenau, it is impossible for me or the witness to deal with two people coming at him so that I would request that you refrain from questioning until your turn comes.

MR. LANKENAU: I will reserve my questions until the conclusion of Mr. Miller's examination.

BY MR. MILLER:

Q The paragraph containing all those page numbers, that also contained a direction to Julie Small as to what to do with that material?

A Yes. There is a suggestion about what to do with the material.

Q To take that material and make a table including all that phenomena and make a table at the end of these three chapters, is that your suggestion to Julie Small?

A Yes. That seems to be what this says, yes.

MR. MILLER: I hand the reporter a one-page document entitled "One month: Reflex

exercises," and request that it be marked Defendants' Exhibit 76 for identification.

(A one-page document entitled "One month: Reflex exercises," was marked Defendants' Exhibit 76 for identification, as of this date.)

BY MR. MILLER:

Q Professor Sutton-Smith, is that a chapter outline or is that a document prepared by you?

A (Perusing) Yes.

Q Did you send it to Julie Small?

A Yes. I guess so.

Q Did you send it to Julie Small?

A Yes, yes. I think so.

Q There is a reference in the first line of that to M. Chapter 1. What does that refer to?

A I would expect it to be the Carmichael Handbook. I suppose it's the Carmichael Handbook.

Q Does the Chapter 1 of the Carmichael Handbook deal with sensory equipment?

A It deals with ethology rather than sensory equipment as such.

Q Have you been able to determine what M. Chapter 1 meant?

A No, I haven't been able to determine it. This is

a Piaget. This whole page is a Piaget.

The first part of it is a Piaget outline again. And I am getting the feeling that there is another M somewhere with Piaget references.

Q Is it your handwriting, "Chapter 4, Response Capabilities"?

A Yes.

Q Is that from Mussen, Conger and Kagan?

A I think it is from the Handbook.

Q Is there a Chapter 4 of the Handbook that deals with physical responses?

A Dorothy has a section here -- about Page 250. It's possibly there. Dorothy Eichorn has an article there. I am not sure.

Q What is the other word that refers to Piaget that has an M in it?

A That's what I am wondering. You see, we had a problem with M before that didn't make any sense, and it was definitely a Piaget reference. We have got another one now that doesn't make any sense.

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(Continued on next page.)

MR. BERGER: Could it have been Mussen, Conger and Kagan?

THE WITNESS: It couldn't have been them. Their Chapter 1 doesn't make any sense for that.

It could be McCandless. That's a possibility because he has a great deal of stuff on response, on sensory equipment, I remember, yes. It's possible.

MR. MILLER: I hand the reporter a document entitled "Notes 1," a single-page document, and it reads, "Physical cognative, intelligence and language development," and ask that it be marked Defendants' Exhibit 77 for identification.

(A document entitled "Notes 1," was marked Defendants' Exhibit 77 for identification, as of this date.)

BY MR. MILLER:

Q Is that a document that you prepared, Professor Sutton-Smith?

A (Perusing) Looks like it.

Q Did you prepare it?

A I think so.

Q Did you deliver it to Julie Small?

A I suspect so.

Q Was that for the purpose of preparing chapter outlines?

A I suppose so.

Q Was it submitted to her for that purpose?

A I'm submitting stuff to her to call her attention to things we have to take into account, yes.

Q What chapter of Sutton-Smith Child Psychology does this relate to?

A (Perusing book.) I think it is 10.

Q In the first numbered paragraph you refer after saying, "We may approach their thinking in various ways," then you refer to, "And information terms (encoding, memory, hypothesizing and evaluating)."

A Yes.

Q "As due MK&C, pages 430-447"; is that correct?

A Yes.

Q Is that Mussen, Conger and Kagan?

A Yes. I think so. Yes.

Q Was that Mussen, Conger and Kagan's section on problem solving?

A Yes. Right.

MR. BERGER: I think it is the one labeled cognitive activities.

A Yes.

Q Is that comparable to the section in your book on problem solving?

A No, not really. I mean it's comparable in respect to that particular approach where we repment their approaches like them, yes.

But as this page suggests, there are various ways to approach problem solving and in my book we approach it in the various ways, whereas in their book they approach it only in that one way.

Q Does your book have a section on problem solving?

A It may be called cognition or something or other. (Perusing) It says, "Problem-Solving Process, 306."

Yes. We have a page 306. We have a section on that.

MR. BERGER: Beginning on page 306.

Q It begins on page 306?

A Yes, right.

Q Dealing with encoding on page 306?

A Yes.

MR. BERGER: 307 is encoding.

A 307 is encoding.

Q Then on page 308 is memory?

A Yes.

Q On page 309, "Generation of Ideas and Hypotheses"?

A Right.

Q On page 312 there is "Evaluation"?

A Yes.

Q Isn't this the section of the book, Professor Sutton-Smith, that you wrote to Julie Small about and said that you thought it had been plagiarized?

A Yes.

Q From Mussen, Conger and Kagan?

A Right.

Q Professor Sutton-Smith, you told us at your testimony last time that you had called Julie Small's attention to the Kagan and Kogan article on this subject.

A Yes.

Q Isn't it true that, in fact, you called her attention to Mussen, Conger and Kagan on this section?

A No. I called her attention to the Kagan and Kogan as well, anyway, at least --

Q Is it your testimony now that you also called to her attention Mussen, Conger and Kagan?

A Apparently from this script, yes.

Q Is there any reference in this script to the Kagan and Kogan article?

A There is in the book.

Q Is there any reference in the memorandum that you

sent to Julie Small?

A No. Not on that page there. No, there isn't.

But you have to realize that I was constantly emphasizing the Carmichael Handbook as our major basis for work.

MR. BERGER: I think you want to amend your answer.

A There is at the bottom of the page a reference to Kagan.

Q Where is that reference?

A The bottom of page 9. It's just at the very bottom of the page there is the reference to Kagan which is the reference to the Carmichael book. So obviously this page I referred to that.

Q Professor Sutton-Smith, I hand you the compilation --

MR. LANKENAU: Page 82.

Q Page 82 of the compilation dealing with this section of your book.

A Yes.

Q Was it that language in your book which caused you to say that there had been, suggested there had been plagiarism from Mussen, Conger and Kagan?

A We are talking about some preliminary draft, you know. We are not talking about the final version, whatever it

was.

Q Were there any changes from the original draft to material that appears in there now of substance?

A That I don't know. There were lots of changes in all the drafts and I can't testify to that one way or the other at this point.

Q Did you ask to have any changes made in this section of the draft?

A I really can't remember. You have to realize I wanted this material in the book because it represented a point of view, Kagan and Kogan's point of view.

Q Did you at the time you received the draft check it out against Mussen, Conger and Kagan?

A No, no. I recollected it as being from them and got a bit upset and then realized I had been foolish.

Q Why did you think you had been foolish?

MR. BERGER: I think that he testified to all this last time and I wish that you would not go over all the material.

Q Would you answer the question, please?

A Because I had forgotten what she reminded me of, that I also recommended Kagan and Kogan.

Q In fact, you had recommended both of them, hadn't you?

A It looked like that, yes.

Q Wasn't it important for you to determine whether or not it had been copied from Mussen, Conger and Kagan?

A I took her reassurance.

Q You took her reassurance for that fact?

A Sure.

Q You didn't compare it yourself?

A I don't think I did. I don't recollect that I did.

Q Did you ask her what her reassurance was based upon?

A She reminded me that the basic source was Kagan and Kogan.

Q You understood that she did not write that section of the book, didn't you? You understood that that section of the manuscript was prepared by professional writers?

A That was true of all sections. That was not a special thing.

Q Did you ask her what she had done to reassure herself that it had been based upon something else?

A No.

Q Did you make any inquiry about that?

A No further than what I did.

Q Professor Sutton-Smith, you had a copy of

Mussen, Conger and Kagan, did you not?

A Yes.

Q You took the trouble to write a letter to Julie Small but you didn't take the trouble to check it against the book?

MR. BERGER: I think that is an argumentative question.

MR. LANKENAU: It is a proper question. There is massive copying in this section, as you well know. Your client wrote a letter saying it looked to him as though it were plagiarism, and you are saying we can't ask the question to whether he takes the trouble to write a letter and go to a conference when he drew it to the attention of the editor to refer to that source?

I want a ruling on that question. Clip that question.

MR. BERGER: You can answer the question. I have long since found out that attempts to short circuit this only create more problems.

Answer the question.

A You need to understand my relationship with Julie. This was -- where were we now? We must have been well into the book, halfway through it or so or more. It was a good

working relationship and I had no reason to doubt her.

Q Professor Sutton-Smith, I have one other additional question on this exhibit.

There is a reference in the second paragraph to "MCK, 447-458."

A That's the reference to their book.

(Continued on next page.)

Q That is a reference to Mussen, Conger and Kagan?

A It appears to be, yes.

MR. BERGER: It is a Piaget discussion.

THE WITNESS: Yes.

MR. MILLER: We are going to break for lunch.

(At 1:15 o'clock P.M. the proceeding recessed for lunch.)

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AFTERNOON SESSION

May 16, 1974
3:15 o'clock P.M.

B R I A N S U T T O N - S M I T H, resumed, having been previously duly sworn, testified further as follows:

BY MR. MILLER:

Q Professor Sutton-Smith, you testified just when we broke up concerning a section of Chapter 10 of the Sutton-Smith book.

A Right.

Q Was there any other occasion in reviewing the first drafts of these manuscripts that you noted paraphrasing from Mussen, Conger and Kagan?

A No. Not to my knowledge, no.

Q Would you remember that if it had happened?

A I think so. It's hard to say. I don't remember any, let's put it that way. I don't remember any such thing.

Q You did --

A I volunteered the one example.

MR. LANKENAU: You volunteered it -- excuse me,

Q You did consider it of importance, did you not, that the book that you wrote not be paraphrased from Mussen, Conger and Kagan?

A You said I did. I never even thought about it at that time. It wasn't in my mind.

Q But if it had been called to your attention that the book that your name was to be on had been paraphrased or some portion of it from Mussen, Conger and Kagan, would you have been concerned about that?

MR. BERGER: I think that is a pretty speculative question. It is a very iffy question.

MR. MILLER: I would like to have an answer to it. I think it is important.

MR. BERGER: President Roosevelt didn't answer iffy questions.

MR. LANKENAU: Are you instructing him not to answer?

MR. BERGER: Yes.

MR. MC ANDREWS: The form is really bad.

MR. BERGER: It is like asking a hypothetical without giving a complete record. How much, what are we talking about, what time?

MR. MILLER: The witness has testified that he can't recall any occasions where apart from

the one section that we have been discussing where he noted what might be paraphrasing from Mussen, Conger and Kagan.

MR. BERGER: That is correct.

MR. MILLER: I am trying to find out what his alertness to that might have been.

MR. BERGER: He stated --

MR. MILLER: And I think that it is proper to find that out to find out whether that was a matter that would have been important to him had it been called to his attention. I think it is a proper question.

MR. BERGER: You are saying that if he noticed paraphrasing or if paraphrasing was called to his attention would he have done anything about it?

MR. MILLER: Yes.

MR. BERGER: In that form he can answer.

BY MR. MILLER:

Q Professor Sutton-Smith, if paraphrasing from Mussen, Conger and Kagan had been called to your attention would you have done anything about it?

A It would depend on the paraphrasing, I suppose.

Q In what way would it depend upon the paraphrasing?

MR. BERGER: I think very clearly he means the extent of it.

MR. MILLER: I think the witness --

MR. LANKENAU: Can answer without suggestions from counsel.

Q In what way, Professor Sutton-Smith, what would it depend on?

A If it was very close I suppose it would be a bad thing.

Q What would you have done about it if that had been called to your attention?

A What I did in the other case, I suppose.

Q What was that?

MR. BERGER: He testified to that.

Q I am not quite sure what you mean. You would have written a letter to Julie Small?

A Talked to her about it, asked what's going on, what are we doing. That's your answer and there is your answer.

Q Did that happen on any occasion other than with respect to the section that we have talked about?

A No.

Q Did you, yourself, discover any paraphrasing from Mussen, Conger and Kagan?

A No.

MR. BERGER: Incidentally, the witness recalled over the lunch hour other possible meanings for the letter M.

THE WITNESS: Yes.

MR. BERGER: Besides the Peter Lorre movie.

THE WITNESS: There is a textbook by Munn, M-u-n-n, which I have used in early years. Actually had it as a textbook. Could have been Munn. We need to check on him.

BY MR. MILLER:

Q Did you provide a copy of Munn to Julie Small?

A This I don't recollect. I know that I had Munn with me and it was a book I knew quite well. So that's a possibility.

Q Did you teach from the Munn book?

A I have taught from the Munn book, yes.

Q For how many years did you teach from the Munn book?

A The first edition of Munn came out in 1938 and I taught from it in the fifties. I don't know which edition it was I taught from but I had thebook with me at that time.

Q What was the most recent edition of Munn?

A I think there was one out this year, 1974.

Q What was the most recent edition of Munn at the time you were working on the Sutton-Smith book?

A You mean what was the most recent edition that they had out or what was the most recent edition I was using?

Q What was the most recent edition you were using?

A I think it was the one in the fifties. Munn has a lot of reference to biological reference, and so on. That's why there is a likelihood of being a reference. But, anyway, it's a possibility.

MR. BERGER: Incidentally, I just want to make a statement now for the record so there will be no surprise to you on Monday.

I have been authorized by Prentice-Hall to state that they intend to apply to the court for permission to amend their answer to include a counterclaim for libel , and on behalf of Brian Sutton-Smith I have been authorized to state that we wish to apply to the court for permission to amend our answer to increase the monetary damages sought in the claim for libel.

MR. LANKENAU: Fine. Talk to me about it. We may not have any objection to those amendments.

MR. BERGER: All right.

MR. LANKENAU: Let us know what you want to do. There may be no point in bothering the court with a matter with which there may be no need to make a formal motion.

If you send me a draft of what you want to change we will take a look at it and perhaps we can deal with it by stipulation.

MR. BERGER: Fine.

MR. MILLER: I hand the reporter a one-page document. It says in the top line, "role of expectancy in focusing attention." I ask that it be marked Defendants' Exhibit 78 for identification.

(A one-page document entitled "role of expectancy in focusing attention," was marked Defendants' Exhibit 78 for identification, as of this date.)

BY MR. MILLER:

Q Professor Sutton-Smith, is that a document that you prepared (handing)?

A (Perusing) I think it probably is. It looks somewhat like mine.

Q Did you send a copy of that document to Julie

Small?

A If it's mine I would have, yes. I think it probably is.

MR. MILLER: I am not going to ask any questions on that at this time.

I hand the reporter a five-page document headed "Imaginative Life, Daydreams and Dreams" and ask that it be marked Defendants' Exhibit 79 for identification.

(A five-page document entitled "Imaginative Life, Daydreams and Dreams," was marked Defendants' Exhibit 79 for identification, as of this date.)

BY MR. MILLER:

Q Was that document prepared by you, Professor Sutton-Smith (handing)?

A (Perusing) Yes.

Q Did you send a copy of that to Julie Small?

A Yes.

MR. MILLER: No further questions on that at this time.

I hand the reporter a two-page document headed in typing at the top "Years 8 to 12," and "Background Reading" in handwritten form at the top of the first page, and request that

it be marked Defendants' Exhibit 80 for identification.

(A two-page document entitled "Years 8 to 12," was marked Defendants' Exhibit 80 for identification, as of this date.)

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(Continued on next page.)

T.16 1 1 Sutton-Smith 267

BY MR. MILLER:

Q Professor Sutton-Smith, is Defendants' Exhibit 80 for identification a document that you prepared (handing)?

A (Perusing) Yes.

Q On page 2 of Defendants' Exhibit 80 for identification it says at the top, "Readings below follow Mussen, Conger, Kagan, with added emphasis by me. Reference to M is to Mussen handbook enclosed."

Did you type that?

A Yes.

Q What is meant by "Readings below follow Mussen, Conger, Kagan"?

A It's hard to say in the light of what's there because it all follows Mussen, Ginsberg, Flavell, Elfferman, Kohlberg, Stone and Church, Jersild, Hess. Propose the categories physical, cognitive, intelligence.

Q Do they follow the categories of Mussen?

A They might. That's the only reference I see there. The references under each heading are to the Handbook.

Q The references under each heading are to the Handbook?

A Yes. Ten is in the Handbook. And the Flavell is in the Handbook under cognitive. Bailey is in the

Handbook under intelligence.

Q What was meant by them saying "Readings below follow Mussen, Conger, Kagan"? That is not the Handbook, is it?

A No. But the actual contents there are to the Handbook.

MR. MILLER: Would you read the witness' last answer, please?

(The answer was read.)

Q Professor Sutton-Smith, I still don't understand and I don't think you have answered my question as to what is meant by the statement "Readings below follow Mussen, Conger, Kagan, with added emphasis by me."

A Well, it's hard to decide because the stuff there doesn't refer to them. As I said, the only thing that I could think would be just the division into physical, cognitive and intelligence. That might have -- nothing else that follows them.

Q You were providing some additional material; is that the purpose of this particular memorandum?

A Providing material. I was providing material for her to consider, yes.

Q In addition to what she would find under these headings in Mussen, Conger and Kagan?

A I don't know that that was the meaning of that.

Q Can you suggest any other meaning for the term, for the language "Readings below follow Mussen, Conger, Kagan, with added emphasis by me"?

A Then let's see. It's hard to take that meaning because here under intelligence it says, "Major reference here must be Bailey in Mussen. Use as chief source," which suggests what it suggests, that it's to be the chief source for that.

Under the cognitive it says, "Piaget's account. See Opper and Ginsburg, Flavell in Mussen."

And it says, "This is more recent and more research oriented than Ginsburg."

So it seems to be suggesting Flavell.

Then the bit about Tanner, likewise. He is the basis for physical.

My categories are the basis for Mussen, Conger and Kagan and this is what I suggest doing within these categories.

Down under Social Rule System there is a book by Opie enclosed. There is enclosed materials of my own on games and Eifferman on sex differences, and so on.

There is an article by Kohlberg on morality suggested by Mussen again.

Then some enclosed materials on peer group from

Stone and Church. And then on social systems I suggest see Sex and Identity, the last chapter, which is my book.

On personality determinants in the family refer to my book The Sibling again. I guess personality in the school suggested the article in the Handbook on creativity.

On socio-economic differences the article by Hess in the Handbook. And on the self, material by Jersild on personality.

Q Professor Sutton-Smith, I still don't understand what the answer to my question is which is why you said, "Readings below follow Mussen, Conger, Kagan."

MR. BERGER: I think that what the witness is saying is they paraphrased Browning and he wrote it and now only God knows.

Q Is that what the witness is saying?

A I did mention the categories. That's the only thing I can think it might be relevant to at this point.

Q Was it in your mind that Julie Small was working from Mussen, Conger and Kagan and, therefore, this would be a meaningful way to present these notes to her?

A Not that she was working from Mussen, Conger and Kagan, no.

Q You were not aware that she was working from Mussen, Conger and Kagan? In fact, she was preparing chapter outlines

as you know from prior testimony.

MR. BERGER: For her own use to understand the field. I am not going to bother characterizing testimony because the professor was here when she testified to that extent.

What do you mean by working from?

Q Is it your understanding that she was doing the kind of work from Mussen, Conger and Kagan that she testified about when you were present about a week ago?

MR. BERGER: Do you mean about comparing chapter outlines for her own use?

Q Preparing chapter outlines of material in Mussen, Conger and Kagan.

A No. I didn't have that in mind. I knew she was reviewing it along with everything else.

Q You knew that she was reviewing Mussen, Conger and Kagan?

A With all the texts in the field, she looked at all the texts in the field. That's what I understood.

MR. BERGER: Incidentally, off the record.

(Discussion off the record.)

BY MR. MILLER:

Q Professor Sutton-Smith, there is some handwriting on that that says, "Good idea if can fit." Is that your

handwriting?

A No.

Q Whose handwriting is it?

A I don't know.

Q On the first page there is some handwriting that says, "Background reading."

A It's not mine.

Q That is not your handwriting?

A No.

MR. MILLER: I hand the reporter a four-page document, the first page of which says "Miscellaneous Anecdotes for Infancy," and request that it be marked Defendants' Exhibit 81 for identification.

(A four-page document, the first page of which says "Miscellaneous Anecdotes for Infancy," was marked Defendants' Exhibit 81 for identification, as of this date.)

BY MR. MILLER:

Q Professor Sutton-Smith, is this a document that you prepared (handing)?

A (Perusing) I believe it is.

Q You submitted it to Julie Small?

A Yes.

Q Would you turn to the third page, please? Did you

submit it to Julie Small? Is there an answer to that?

A I said yes.

Q Professor Sutton-Smith, under the heading "Anecdotes about Motor Norms," on the third page there is the statement, "Goes with Chapter 1," and then in parentheses, "The Maturation of Motor Development and Manipulation, pages 172-179."

What do those pages refer to?

A My suspicion is they refer to Mussen, Conger and Kagan.

Q What is the basis for that suspicion?

A Because on those pages it's full of the same sort of stuff. Motor development and manipulation.

Q It is true that the heading at page 173 is, "The Maturation of Motor Development"?

MR. BERGER: It is what it is.

MR. MILLER: I would like to put it in the record.

MR. BERGER: The witness is not here to test his reading ability.

(Continued on next page.)

BY MR. MILLER:

Q And the heading at Page 177 is "Manipulation"?

A That is correct. Right.

Q Professor Sutton-Smith, does that refresh your recollection now as to the page numbers that this refers to in your memory?

MR. BERGER: I think he answered it before that based on his examination of the book he believes it to be true.

A Yes.

MR. LANKENAU: Is that your testimony?

THE WITNESS: Yes.

MR. BERGER: That is what he testified.

BY MR. MILLER:

Q Professor Sutton-Smith, what was the purpose of submitting these anecdotes?

A This was my description of a great deal of developmental material and how young children develop through the first year in a number of respects. And what I have suggested that she understands how this presumably -- where to fit this in by looking at these other references, and one of them is Gesell's Norms which I also provided, I refer to on the final page at the bottom and I provided her with a table from Gesell's material and Bruner is also

mentioned there.

Q You said at the heading of this, "Goes with Chapter 1"; is that right?

A Where is that?

Q I am talking about the very heading of the third page and this is, "Anecdotes about Motor Norms."

A Yes.

Q What did that mean, "Goes with Chapter 1"?

A I have no recollection at this time. Maybe we had a different chapter arrangement then. It doesn't go with Chapter 1 in any of the books I can think of.

Q Did this mean that these anecdotes were to go with the portion of your book that is going to deal with maturation of motor development and manipulation?

A This was a suggestion, yes. This part of the material that I provided.

Q In referring that material to Julie Small you referred to the six pages from Mussen, Conger and Kagan; is that right?

A And the Gesell Norms. So she would know how these anecdotes would fit into that chapter, what this was all about.

Q Professor Sutton-Smith, at the very head of this page haven't you described this chapter as being dealing

with the maturation of motor development and manipulation, and then referred to six pages from Mussen, Conger and Kagan?

A There is a reference to six pages from Mussen, Conger and Kagan. There is no other description of what's to be done or anything else.

Q Your book did have a section on manipulation, didn't it?

A Sure. Yes.

Q Your book also had a section on the maturation of motor development?

A Yes. Sure.

Q You were providing some anecdotes that would go with those sections, that section of your book?

A That's this piece of material, yes.

Q Weren't you describing that section of your book by reference to Pages 173 to 179 of Mussen, Conger and Kagan?

A I was making it clear to Julie how she was to understand this material.

Q How were you making it clear to her?

A If you don't know anything and you are uneducated, then in order to understand this material you have to know what it's all about and you have to look at some Orthodox

material to know what it's all about. I gave her Gesell and referred to the MCK.

Q You appreciated that Julie Small had to rely on MCK because of her lack of background in the field?

MR. BERGER: MCK and Gesell.

A In this particular instance, yes.

Q You appreciated that fact?

A Don't forget this is just one page. A lot of other stuff was submitted also. You have got all the material in Carmichael, the Kessen article, there were three articles on infancy, all of which she had available.

Q Professor Sutton-Smith, I notice you didn't put anything other than a page reference here; is that correct?

MR. BERGER: I don't know what the thing on top is.

Q Can you read what is on top?

A I can't at the moment. It's probably a reference to the book. I don't know.

MR. LANKENAU: Will you please produce at the next --

MR. MILLER: I would like to find out. Maybe we have a better copy downstairs. Why don't we take a short recess and I will go down and see

if I can find that document.

MR. LANKENAU: On the record, if Mr. Miller is unable to find a clear copy of that, would you produce the original of that at the next session of this witness' deposition?

THE WITNESS: This is probably it. I gave you everything.

MR. BERGER: This is --

MR. LANKENAU: This is all from your files.

MR. BERGER: If it is we will give you whatever we have.

MR. LANKENAU: I can't represent as to whether these came from Sutton-Smith's files or not as I did not assemble these documents.

(A recess was taken.)

(The proceeding reconvened with all parties present.)

BRIAN SUTTON-SMITH, resumed, having been previously duly sworn, testified further as follows:

MR. MILLER: I hand the reporter a two-page document headed "Anecdotes about Motor Norms," and ask that it be marked Defendants' Exhibit 81-A

for identification, it being a clearer copy of the two pages.

(A two-page document entitled "Anecdotes about Motor Norms" was marked Defendants' Exhibit 81-A for identification, as of this date.)

BY MR. MILLER:

Q Professor Sutton-Smith, when you sent this to Julie Small it simply included page references; is that correct?

A I guess so.

Q How did Julie Small know that this was a reference to Mussen, Conger and Kagan?

A I have no idea, no recollection at all.

Q You don't know how she understood that?

MR. BERGER: That is what he said.

A I can't recollect.

Q You have testified about many, many sources, Professor Sutton-Smith, that you provided to Julie Small.

A Yes.

Q Now in this document you simply refer to a page number which, in fact, was a page number in Mussen, Conger and Kagan.

A Yes.

Q Is that correct?

A Yes.

Q Isn't it true that you made so many references that you didn't have to put in that it was from Mussen, Conger and Kagan?

MR. BERGER: Is that your conclusion?

Q Is that correct, Professor Sutton-Smith?

A That's one inference. I don't make that one necessarily.

Q How would she know that this was a reference to Mussen, Conger and Kagan?

A She might have been on the telephone with me. We were on the telephone more than I was writing stuff to her.

Q Do you have any recollection of talking with her on the telephone about this?

A Not specifically. But there are other ways she would have known.

Q You discussed Mussen, Conger and Kagan on the telephone with Julie?

A We discussed everything on the phone with Julie, I guess.

Q Including Mussen, Conger and Kagan?

MR. BERGER: You are asking him whether he has an independent recollection of discussing

any particular part of Mussen, Conger and Kagan on the telephone?

MR. MILLER: Yes.

Q Do you have a recollection discussing Mussen, Conger and Kagan with Julie Small on the telephone?

A Not a specific recollection, no.

Q Is it your best recollection that you did not discuss Mussen, Conger and Kagan in connection with the reference that we have just discussed?

A No. I have no recollection.

MR. MILLER: I hand the reporter a one-page document addressed to "Julie," signed by "Brian," and request that it be marked Defendants' Exhibit 82 for identification.

(A one-page document from Julie to Brian was marked Defendants' Exhibit 82 for identification, as of this date.)

BY MR. MILLER:

Q Is that a document that you prepared, Professor Sutton-Smith (handing)?

A (Perusing) Yes.

Q When did you prepare it?

A I think this looks like pretty early in the piece.

Q Can you be as precise as possible as to when this was prepared?

A Well, it's a statement on the first two years, so that's the beginning. I don't recollect it at all but I infer that seeing the first point is this packet includes the statements on the first two years, that we were still on the beginning of the book.

- - -

(Continued on next page.)

Q What month would that have been?

A Probably December, January. November, December, January. December, January, probably.

Q That is January 1972?

A Yes.

Q The second item reads on the list, "Organization of Materials from Mussen, Conger, et cetera." What did that refer to?

A That refers to another item you brought up last time.

Q What was that?

A It's got different -- it's got chapter headings of theirs and subheadings with page numbers from them plus some other comments by me.

MR. BERGER: I think it is in the 40's exhibit number.

A Yes. It's one of the other exhibits.

MR. BERGER: I think it was marked at Julie Small's deposition and you asked the witness about it at his deposition.

THE WITNESS: That's right.

Q You are referring to Defendants' Exhibit 35 for identification (handing)?

A (Perusing) Yes. That's what I expected at first.

It says "Organization."

Q "Mussen, Kagan," therefore was referring to the textbook Mussen, Conger and Kagan?

A That No. 2 was, yes.

Q Incidentally, these page numbers on Defendants' Exhibit 35, there are a number of items under each chapter heading and a number of page numbers next to them. What were those page numbers to?

A I told you that last time. Mussen, Conger and Kagan.

MR. MILLER: I hand the reporter a one-page document entitled "Social Development," and request that it be marked Defendants' Exhibit 83 for identification.

(A one-page document entitled "Social Development" was marked Defendants' Exhibit 83 for identification, as of this date.)

BY MR. MILLER:

Q Is that a document that you prepared, Professor Sutton-Smith (handing)?

A (Perusing) Yes.

Q Did you submit that to Julie Small in connection with her preparation of outlines?

A Yes.

Q The very first item there says, "Mussen et cetera." What was that referring to?

A Either the textbook or the Handbook.

Q Have you ever referred to the Handbook as Mussen et cetera?

A I have referred to it as Mussen most of the time. But, of course, it's never Mussen. It's always one of the other writers. So that makes it a little complicated.

Q What is your best recollection of what you are referring to here?

A I really couldn't say. I think it might be the Handbook.

I had already given them the articles by Kessen and Thompson in the Handbook. But this could be the text, too. I really don't know.

Q Is there a chapter in the Handbook that contains good coverage of faces, babbling, smiling, crying and sucking?

A Yes. Sure. The Kessen, Haith, Salapatek and another one on infancy that covers some of the stuff is Thompson and Grusec. It could be in there.

Q Isn't it true, Professor Sutton-Smith, that when you referred to Kessen you generally referred to Kessen as Kessen?

A Sometimes I did.

Q Wasn't that the way you referred to Kessen when you wrote to Julie Small?

A I suppose I did some of the time. But a lot of the time I referred to the Handbook as Mussen, you see. That's the problem. I more often referred to the Handbook as Mussen than I referred to it as Kessen because it was Mussen's handbook.

Q Isn't the Handbook a rather extremely comprehensive volume covering a lot of material?

A Sure.

Q All you have in here is "Mussen et cetera," without any specific reference to any particular portion. Wouldn't you have been more specific if you were referring to the Handbook?

A Not necessarily because usually when I gave the Handbook I put circles by and crosses by the parts that I was interested in paying attention to.

Q Did the Handbook accompany this memorandum?

A They had the whole Handbook.

Q Yes.

A They had a good handbook. We had a bargain. I tore mine into pieces and my bargain was I got a good one back when I finished. As I tore mine and annotated and crossed out and simply ripped out the pages they then had them.

And at the end of the organization they handed me back the good copy of the Handbook which they could keep for reference during the process.

MR. MILLER: I hand the reporter a two-page document addressed to "Julie" on the stationery of Teachers College, Columbia University, and request that it be marked Defendants' Exhibit 84 for identification.

(A two-page document addressed to "Julie" on the stationery of Teachers College, Columbia University, was marked Defendants' Exhibit 84 for identification, as of this date.)

BY MR. MILLER:

Q Is that a letter which you wrote to Julie Small, Professor Sutton-Smith (handing)?

A (Perusing) Looks like it, yes.

Q Is the second page of that something that you prepared?

A Yes. Looks like it.

(Continued on next page.)

Q Did you send that to Julie Small?

A Looks like it, yes.

Q You said at the beginning of that letter, "My assumption is that you will follow MCK fairly closely."

A That's what it says there, yes.

Q Is that the assumption that you made?

A Then I went on, "but update it with material from Child & Zigler enclosed."

Then I went on, "There are chapters in Mussen Handbook that are also relevant which I haven't gotten to you yet -- they are not easily digestible. Thus McNeill on Language, Mischel on Sex Typing (I like our book better), Feshbach on Aggression. Perhaps we need to put more in on social class effects on socialization: Hess -- social class and socialization; DeVine -- cross-cultural. But all these chapters require some digesting, and I'm working on that and will let you have them appropriately marked."

Q Professor Sutton-Smith, did you make the assumption that Julie Small was going to follow MCK fairly closely but updating it with material from Child & Zigler?

A And all the others. That's what it says there.

Q I am asking you and I don't know that I have an answer yet, if you made the assumption that is set forth in the first paragraph of this memorandum.

MR. BERGER: I object to the question as to form because the witness has testified that he made the assumption that she would follow the entire page rather than just the first paragraph.

A It would be pretty hard to follow it pretty closely if you did the whole page.

Q You did not know at this time, is that correct, what additional material you might get from the Handbook?

A I knew it. I had read it all. It's just that it had to be prepared for their use.

Q So you did not know what material you were providing to Julie Small?

A No, no, no.

MR. BERGER: He has just testified that he knew the material but that, as he previously testified in response to another question, that when he handed her material from the Manual he did a great deal of annotating of that material.

Q Isn't it true, Professor Sutton-Smith, that you were going to work on material from the Handbook and let Julie have it appropriately marked at some future time?

A That's what it says here, yes.

Q Is that true?

A Yes.

Q And in the meantime was it your assumption that she was going to follow Mussen, Conger and Kagan fairly closely but updating it with material from Child & Zigler?

MR. BERGER: And the other material?

MR. MILLER: No. That is not my question. I want my question answered as put.

A Well now, I would have to say any other material, too, yes.

Q But she didn't have any other material at the time you wrote this note; is that not correct?

A You can't assume that.

Q Professor Sutton-Smith, in the first paragraph you refer to Mussen, Conger and Kagan; is that correct?

A Yes. But you know -- okay. Carry on.

Q Then you refer to some updating material from Child & Zigler.

A Yes.

Q Is that correct?

A Yes.

Q Then you refer to some additional material which you were working on and would let Julie have in the future.

A Yes.

Q Is that correct?

A Yes.

Q And at the time you sent this memorandum to Julie Small she didn't have that additional material that you were working on; is that correct?

A Not this material here, right.

Q You were assuming that she was going to follow MCK closely, updating with material from Child & Zigler; is that correct?

A She already had a lot of material on Sex Typing and Family Structure because of my two books. At least I know they were provided before this and there was probably other stuff, too.

Q Does your letter to Julie Small refer to any of that material?

A It's referred to in the other letters we have been dealing with this afternoon. She obviously had it.

MR. BERGER: It is also in here. It says, "I like our book better."

A Yes.

Q Professor Sutton-Smith, was it correct that in the section of socialization you assumed that Julie Small was going to follow Mussen, Conger and Kagan fairly closely, updating it with material from Child & Zigler?

A What do you mean by follow MCK closely?

Q Professor Sutton-Smith, what do you mean by

follow MCK fairly closely?

A It means you could look at a chapter to see what their references are, what sort of research they have used, take that into account. When you go to your own research and have other sources you consider your book as one of the sources for material, what were their sources, what were their experiments.

That's what I mean by you will follow closely.

Q That is what you meant when you said to Julie that you assumed she was going to follow it fairly closely?

A As one of the sources of information about the field.

Q That is what you meant by that language?

A That's what I mean. I am not sure what you mean by it, but that's what I mean by it, correct.

MR. BERGER: These documents were stapled together, were they not, these two pages?

MR. MILLER: They are now. I don't know whether they were before.

I hand the reporter a document entitled "Chapter 9 notes SS," and request that it be marked Defendants' Exhibit 85 for identification.

(A two-page document entitled "Chapter 9 notes SS," was marked Defendants' Exhibit 85 for

identification, as of this date.)

BY MR. MILLER:

Q Professor Sutton-Smith, did you prepare that document?

A (Perusing) Yes.

Q Did you send it to Julie Small in connection with Chapter 9 of the book?

MR. MILLER: I am not going to ask -- I just want to ask the witness if he prepared that document and sent it to Julie Small.

A It looks like a comment on a galley.

MR. BERGER: Manuscript.

A Manuscript.

Q Did you send that to Julie Small?

A I think so, yes. Yes.

MR. MILLER: I hand the reporter a document entitled "For epiloque," and request that it be marked Defendants' Exhibit 86 for identification.

(A two-page document entitled "For epilogue," was marked Defendants' Exhibit 86 for identification, as of this date.)

MR. MILLER: I hand the reporter a two-page document with the heading, "Titles" and request that it be marked Defendants' Exhibit 87 for

identification.

(A two-page document entitled "Titles" was marked Defendants' Exhibit 87 for identification, as of this date.)

MR. MILLER: I hand the reporter a one-page document entitled "Ego Identity" and request the reporter to mark it Defendants' Exhibit 88 for identification.

(A one-page document entitled "Ego Identity" was marked Defendants' Exhibit 88 for identification, as of this date.)

BY MR. MILLER:

Q Professor Sutton-Smith, would you examine Defendants' Exhibits 86 through 88 and tell me if you prepared those documents and sent them to Julie Small?

A (Perusing) Yes. I think so, yes.

MR. BERGER: By that you mean the entire documents or just a particular portion of the documents?

MR. LANKENAU: Can we have an answer to that question?

MR. BERGER: He is looking at the documents.

THE WITNESS: I am not sure. The type's all mine. The writing on the bottom of 87 at first

I thought it wasn't mine, but I am not that sure.

MR. BERGER: What about the handwriting that says, "This was done in preceding chapter"?

THE WITNESS: That's not mine. I don't usually write like that but sometimes I do. I am not certain it's mine.

MR. BERGER: But the rest you are certain?

THE WITNESS: Yes.

MR. LANKENAU: May we have the original of Exhibit 87 at the next session of the deposition of this witness? Because the handwriting is not clear on this copy.

MR. BERGER: That was produced from his files?

THE WITNESS: I don't recollect that. A lot of the stuff you are showing me wasn't in my files.

MR. MILLER: That was from Prentice-Hall?

THE WITNESS: I think it might be.

MR. LANKENAU: Will you arrange --

MR. BERGER: I will try. My problem is that I have relocated some of the files and I don't know where it would be in the files.

MR. MILLER: I can tell you. There were a number of files that were loose and so I could be able to tell you whether it was in a folder or

loose. So I will tell you that.

MR. BERGER: Okay.

MR. MILLER: I hand the reporter a draft of a manuscript for Chapter 5. It appears to be a rewrite by Lawrence Locke, dated March 17, 1972, fifty pages in length with five pages of references attached. I request that it be marked Defendants' Exhibit 89 for identification.

(A draft of a manuscript for Chapter 5, a rewrite by Lawrence Locke dated March 17, 1972, fifty pages in length with five pages of references attached was marked Defendants' Exhibit 89 for identification, as of this date.)

BY MR. MILLER:

Q Professor Sutton-Smith, would you turn to Page 4 of that document, please, and at the bottom of the page there is some writing that appears to be a question addressed to SS; is that correct?

MR. BERGER: Addressed to SS?

MR. MILLER: I am referring to the material on the left-hand margin near the bottom.

A Yes.

Q Is that your handwriting?

A The "SS" is not. The bottom one along the bottom

is my handwriting.

Q The material, the handwriting at the bottom of the page is your handwriting?

MR. BERGER: Let the record be clear there are two handwriting statements. The witness testified --

MR. LANKENAU: Let the witness answer the question.

MR. BERGER: It is a question of reading. Read it into the record.

THE WITNESS: On Page 4 there are two handwritings at the bottom left-hand corner.

The first one on the very left side looks like a question to me and it says, "Not so simple. They have function, I am sure?"

Then underneath that apparently answer, "Yes, startles, for example, have a regular relationship to the level of neurological activity."

BY MR. MILLER:

Q Professor Sutton-Smith, I hand you the same exhibit and ask you to refer to Page 13. There is a handwriting up at the top of the page. Is that your handwriting?

A Yes.

Q What does that read?

A "This page is a paraphrase of Mussen, Conger and Kagan."

Q You made that notation when you read that material?

A Apparently, yes.

Q What did you do about it?

A I have no recollection what else I did about it.

Q Did you call Julie Small?

A I always talked about the chapters, yes, so I agreed with what she said on the chapter and I sent it in.

Q Do you have any recollection of talking to Julie Small about that?

A No. Not in particular. No, I don't.

Q Wasn't that a matter of some significance to you if it was a page in that manuscript that was a paraphrase from Mussen, Conger and Kagan?

A I must suppose it was and I am sure I talked to her about it on the phone, but I don't recollect the occasion.

Q Was any change made in the final manuscript as a result of that comment?

A I couldn't say without looking at the final manuscript.

Q Do you recall making any change in the final manuscript as a result of making that comment?

A No.

Q How did you find out that it was a paraphrase of Mussen, Conger and Kagan?

A I suppose I must have looked at them. Or either that or I knew it. I must have looked at their pages.

Q Did you check any other portion of Chapter 5 against Mussen, Conger and Kagan?

A I have no recollection. I don't recollect this even. But it's obviously there.

Q Professor Sutton-Smith, having noticed that one page was paraphrased from Mussen, Conger and Kagan did it occur to you that other pages might have been paraphrased from Mussen, Conger and Kagan also?

A There is no notation that that's so here.

Q Did you, in fact, make a comparison of that page with Mussen, Conger and Kagan?

A I have no recollection of so doing. But because I made that comment I must infer that perhaps that I did.

Q Is there any doubt in your mind that you did that, that you made a comparison with Mussen, Conger and Kagan?

A It's a logical question. I have no recollection.

Q Professor Sutton-Smith, you previously testified that you did not recall, apart from Chapter 10, noting or

having called to your attention any section of the manuscript which might have been paraphrased from Mussen, Conger and Kagan; is that correct?

A Right. I didn't recall.

Q That testimony is not correct; is that right?

MR. BERGER: No, no. His testimony is he did not recall. The testimony is correct that at the time he did not recall. You have now refreshed his recollection.

Q Does this refresh your recollection now, Professor Sutton-Smith?

A There was this thing here. I don't remember the event or the occasion or anything else. That's my writing there so I sent it.

Q You cannot recall having noted that it was paraphrased from Mussen, Conger and Kagan?

MR. BERGER: That is what he stated.

Q Professor Sutton-Smith, could I have that document back for a minute, please?

I hand you again Defendants' Exhibit 89 for identification and ask that you examine Page 16. Is there some handwriting in the middle of the page that is yours (handing)?

A (Perusing) Yes.

Q Would you read that into the record, please?

A "Because girls growth is also more stable than boys it is not more possible to make predictions from early to late skeletal growth."

It must be MCK, Page 148.

Q That was a reference to Mussen, Conger and Kagan?

A Yes.

MR. MILLER: Would you read back how that read?

(The record was read.)

Q What you originally read was actually MCK?

A "It is more possible." I did not read "not." "It is more possible."

MR. BERGER: I think the reporter read "not." I don't think the witness read "not."

MR. LANKENAU: I heard the witness read "not."

BY MR. MILLER:

Q What was the purpose of making that comment?

A I wanted them to have that piece of information in there.

Q So that you were suggesting an addition to the draft?

A Yes.

Q Was it your expectation that the writer who did that revision would make an appropriate addition to the manuscript at that point?

A Yes.

Q Relying on Page 148 of Mussen, Conger and Kagan for his additional material?

A Not necessarily. All I wanted was my sentence.

Q Did you cite Mussen, Conger and Kagan at any place in your book?

A I don't think so.

Q Would you check --

A I think the answer is no.

Q If there is any doubt in your mind would you check your book?

A I cite Mussen. Don't cite them together. Kagan we cite a lot. Not the three authors.

Q Is your testimony, Professor Sutton-Smith, that your book did not cite Mussen, Conger and Kagan?

A Right. As a result of looking at this index.

Q Professor Sutton-Smith, do you recall any other examples of, as a result of your recent testimony, any other examples of paraphrasing from Mussen, Conger and Kagan that you either noted or was brought to your attention?

A No. I don't recall.

Q Is it your testimony that you cannot recall one way or the other or is it your testimony that you have a positive recollection of such a thing not happening?

A Well, I didn't recall this one and I don't recall any others. I would add that with all the manuscripts and the -- it would be very hard to recall all the specifics, fourteen chapters.

MR. BERGER: Fifteen.

A Fifteen chapters cycled through twice plus the galleys, three times fifteen, a pretty hectic pace. So I don't recall the details of particular chapters.

Q Professor Sutton-Smith, plagiarism would be a matter of some importance, would it not, to you?

A Yes. Of course.

Q Would not that have stood out in your mind if indications of plagiarism came to your attention?

A It said here paraphrase. It doesn't say plagiarism, does it?

Q What do you understand by plagiarism?

MR. BERGER: For what purpose, do you mean the legal definition under the copyright act?

MR. MILLER: No. I would just like to know what this witness' understanding of the phrase is.

A You mean now or then?

MR. BERGER: The witness has had a considerable education in the law of copyright that I have given him.

BY MR. MILLER:

Q What was your understanding of the word plagiarism at the time?

A Copying other books as they were. My understanding was you could have 500 lines by quotation of another book and no more. Other books couldn't be copied.

Q You couldn't take more than --

MR. BERGER: Five hundred words or 500 lines?

THE WITNESS: Five hundred lines.

MR. BERGER: I think it is 500 lines. Five hundred words.

Q You could use 500 words, not in excess of 500 words --

A For quoting purposes. As direct quotes.

Q What was your understanding of plagiarism insofar as paraphrasing is concerned?

MR. BERGER: What type of word?

Q I am asking for your understanding at that time and you can qualify it in any way you wish to.

A It's very difficult for me to know then as compared

with now. I don't think that my understanding was very clear in the light of what I have learned since.

Q What was --

A I can say this, I think. I was not under the impression that we were paraphrasing somebody else.

Q Was that based upon any investigation or checking?

MR. BERGER: What do you mean, investigating or checking into the law of copyright?

MR. MILLER: No. Into the similarities between the manuscript as it was being prepared and Mussen, Conger and Kagan.

A No. There is a think you should realize and that is most of this stuff is very common in the field. Practically all of this stuff is in a whole host of other textbooks. There is a great overlap in the field. Most of the stuff is familiar to me. I have been lecturing it for twenty years. The material is more familiar to me than Mussen, Conger and Kagan is familiar to me.

Q Professor Sutton-Smith, was it your testimony that it did not seem to you that there was paraphrasing?

A In general, no, it never came up. So far we have only two occasions where it occurred to me. The one I mentioned myself voluntarily and this one you have recollected to me written on here somewhere.

Q Did you check any other portion of Chapter 5 to see whether or not any portion was, in your words, paraphrasing?

A I have no recollection whether I did or whether I didn't.

Q If the entire manuscript had been paraphrased from Mussen, Conger and Kagan would you have considered that plagiarism?

MR. BERGER: Objection. I direct the witness not to answer. It is too speculative.

Q Professor Sutton-Smith, if half of the transcript had been paraphrased --

MR. BERGER: I object and direct the witness not to answer.

Q If half of the manuscript had been paraphrased from Mussen, Conger and Kagan, and I am referring to Chapter 5, would you have considered that plagiarism?

MR. BERGER: I direct the witness not to answer and I trust the next question won't be twenty percent.

MR. MC ANDREWS: Are you charging that half of the chapter was paraphrased?

MR. MILLER: In excess of half of the chapter.

MR. MC ANDREWS: You are charging in excess of half the chapter?

MR. MILLER: Yes, we are.

MR. LANKENAU: Are you instructing the witness not to answer, Mr. Berger?

MR. BERGER: That is correct.

MR. LANKENAU: Would you clip those questions so that we can have this for Monday's hearing in court?

MR. BERGER: Fine.

MR. MILLER: I hand the reporter what appears to be a manuscript for Chapter 12 and it appears to be sixty-five pages in length with two-page bibliography at the end. The name Sutton-Smith appears in the top right-hand column and I request the reporter to mark it Defendants' Exhibit 90 for identification.

(A manuscript for Chapter 12, sixty-five pages in length with a two-page bibliography, was marked Defendants' Exhibit 90 for identification, as of this date.)

MR. LANKENAU: Mr. Miller and I have had an opportunity to confer about your statement and your intending to make a motion returnable

Monday for --

MR. BERGER: I would say that I have enough to do on Monday without making a motion which I certainly could not do in compliance with the Federal rules and the rules of the Southern District. But that I am placing you on notice that in my papers addressed to your motion I will make the statement that we intend to so move as soon as we can.

MR. LANKENAU: Fine. I want to state on the record now that we will not consent to such a motion and vigorously resist it and, therefore, you should make such a motion whenever you think it is appropriate or whenever time permits you to make it.

MR. BERGER: Fine.

BY MR. MILLER:

Q I hand the witness Defendants' Exhibit 90 for identification and request that he examine Page 15 (handing).

Professor Sutton-Smith, is there handwriting at the top of Page 15 that is yours?

A (Perusing) Yes. There are two sets of handwriting. The one on the left sloping backwards at forty-five degrees is not mine. But the one at the top running across the top

is mine.

Q Would you read into the record the handwriting that is yours?

MR. BERGER: Read them both in.

Q I would like you, in any event, to read initially the handwriting that is yours.

A "This is again too close to MCK for comfort. It's spot-in-spot paraphrasing."

Q What you have just read is your handwriting?

A Yes.

Q There is other handwriting on the top of that page, too. Is that yours?

A No. That's somebody else's.

Q Was that handwriting on there when you made your notation?

A I doubt it. But I am not sure.

Q Did you do anything about that notation that you made on Defendants' Exhibit 90 for identification?

MR. BERGER: Other than make the comment?

MR. MILLER: Yes.

Q Did you do anything about it other than to make the comment?

A I can only say that in general I talked to Julie about all manuscripts over the phone.

(A recess was taken.)

(The proceeding reconvened with all parties present.)

B R I A N S U T T O N - S M I T H, resumed, having been previously duly sworn, testified further as follows:

BY MR. MILLER:

Q Professor Sutton-Smith, what, if anything, did you do with respect to your comment at the top of the page, "This is again too close to MCK for comfort"?

MR. BERGER: Didn't he have an answer to that question just before the break?

(The record was read.)

Q What, if anything, Professor Sutton-Smith, did you do --

A Well, I have no recollection but obviously as this line shows I showed concern about it.

Q Was any change made in the draft as a result of your comment?

A I couldn't be able to tell without looking.

Q Do you recall that a change was made as a result of your comment?

A I don't recall.

Q Did you have a discussion with Julie Small about making changes as a result of your comment?

A That's what I said I must assume, that I did have a discussion, yes.

Q Do you recall any such discussion?

A We discussed all the time. I don't recall specifically any discussion because we had so many discussions about everything.

Q Did you ask Julie Small how it came about that this was paraphrased from Mussen, Conger and Kagan?

A I have no recollection of that.

Q Did you want to know how it came about that this was paraphrased from Mussen, Conger and Kagan?

MR. BERGER: What do you mean how did it come about?

A I have no recollection of that.

Q Did you ask Julie Small to see the chapter outlines?

A I have no recollection.

Q Your testimony is that you have no recollection, specific recollection, of any conversation with Julie Small concerning the comment that you made or what should be done about it?

MR. MC ANDREWS: Which comment?

Q "This is again too close to MCK for comfort."

A No. I don't recollect.

Q Professor Sutton-Smith, is there a notation on the left-hand margin of the same page that says, "Paraphrasing MCK Page 509"?

A Yes.

Q Whose handwriting is that?

A That's mine.

Q On the next page there is handwriting that says, "A bit close to MCK, Page 509."

A Right.

Q Whose handwriting is that?

A That's mine. Those are probably the things that the sentence refers to.

MR. BERGER: You mean the initial sentence you quoted?

THE WITNESS: Yes.

Q There is another comment on Page 18 that reads, "Page 510 same generalization, same example"; is that right?

A Yes.

Q Is that your handwriting?

A Yes.

Q That Page 510 referred to Mussen, Conger and Kagan?

A One must assume so.

Q Did you have any discussions with Julie Small

about those comments?

A I think these are all part of the original comment so the answer is the same, same answer.

Q You cannot recall any conversation with Julie Small concerning those matters?

A No. I don't recall the conversation.

Q Did you have a conversation with Julie Small about that?

A I am sure we probably did. We had a conversation about all my remarks.

The usual practice was I would get the manuscript, I would go through, write on it, type pages or whatever, and then would discuss it with her and then send it in to her. That was the usual procedure.

There may have been occasions where I couldn't get to her and I just sent something in without it, but I imagine I talked about this, showed concern.

Q You imagine you showed concern to her?

A Yes.

Q Then weren't you interested in what she was going to do about it?

A Yes.

Q Did you find out what, if anything, she did about it?

A As I have no specific recollection of any of this, I don't see how I can answer that question.

Q You have no recollection, in other words?

MR. BERGER: That is right.

Q Did you check the galleys when they came in to see if any changes had been made in the sections that you are referring to?

MR. BERGER: I think that his testimony from the prior section is that it was then revised again and then he got the galleys, so there were two more opportunities.

Q What stage was this draft?

A I can't tell.

Q Was that the first draft or the second draft?

A I cannot tell. They looked the same whether they were first or second.

Q So you might have gotten another manuscript or the next might have been a galley; is that correct?

A Yes. That's right.

Q When the next one came in did you check it to see whether any changes had been made?

A Check it against what, the first one?

Q Against the first one or against Mussen, Conger and Kagan.

A I wouldn't have the first one when the second one came in.

Q How did you know that that was too close for comfort when you read it over? Did you check it against Mussen, Conger and Kagan?

A I must have.

Q When the galley came in did you then check the galley against Mussen, Conger and Kagan?

A I have no recollection of doing so. I might have. I don't recollect it.

Q Professor Sutton-Smith, haven't you testified that you had the responsibility to insure that there was no plagiarism in a book of which you are the author?

A Yes.

Q Doesn't that responsibility include checking indications of paraphrasing?

A Well, if there were further indications, these are checks right here.

Q Doesn't that responsibility also include following through to see whether there was any additional paraphrasing?

MR. BERGER: When you say responsibility do you mean general responsibility?

MR. MILLER: I am talking about his responsibility as an author of a book that is now being

sold on the market.

A My assumption was what I told Julie to do she would do.

Q You didn't check it out yourself?

A I have no specific recollection of having done so or not having done so subsequently.

Q Professor Sutton-Smith, you have now testified that you noted what appeared to be paraphrased similarities of an extensive nature in Chapter 10 --

MR. BERGER: He did not say extensive.

Q Professor Sutton-Smith, you have testified that at least initially you advised Julie Small that you thought that portions of Chapter 10 had been plagiarized --

MR. BERGER: No, no, no. Paraphrased. The letter that you wrote is in identification and speaks for itself.

MR. MILLER: All right. Let's get to that.

MR. BERGER: How much longer are we going with this witness? He has been complaining. He is tired.

MR. MILLER: We are not going very much longer.

BY MR. MILLER:

Q Professor Sutton-Smith, Defendants' Exhibit 61 for identification reads in the first paragraph, "I find this first draft of Chapter 10 totally unsatisfactory. The major reason being that it is an almost direct paraphrase of MCK and G&O."

Now, having noted that and having noted at least in Chapter 5 that one page had been paraphrased from MCK and having noted additional paraphrasing in Chapter 12, did you not consider it your duty as an author to make further investigation to find out how extensive that paraphrasing was?

A In a sense I was constantly making -- I mean as I read through this either came to my consciousness or didn't. I read the whole book through three times, don't forget. I was constantly reading the book.

What are you asking?

Q I am asking whether you as an author --

MR. BERGER: He has answered the question.

Q -- had a responsibility to check the manuscript for plagiarism.

A I considered I had fulfilled that obligation.

Q How did you fulfill that obligation?

A Just by reading the manuscript and being aware of

sources, and so on and so forth.

Q Having noted what you noted in Chapter 10 and in Chapter 5 and in Chapter 12 did you not consider it your responsibility to check the manuscript further against Mussen, Conger and Kagan to determine whether there was additional paraphrasing in that manuscript?

MR. BERGER: I think that can be answered yes or no. The question can be answered yes or no.

A Yes.

Q You did consider it your responsibility?

A Yes.

Q What did you do?

A See, I read all this and those were the places I noted it. I didn't note it anywhere else. Therefore, I assumed there was no paraphrasing elsewhere.

Q Did you, in fact, check every manuscript against Mussen, Conger and Kagan to determine whether or not it had been paraphrased?

A Why would I do that? I mean I had read Mussen, Conger and Kagan. I knew the book to some extent. The book wasn't about Mussen, Conger and Kagan. It was about child psychology.

My concern was with the book, not Mussen, Conger and Kagan.

There were occasions when I noted these examples, there were not other occasions when I noted these parallels.

MR. BERGER: I think you are getting into a very speculative line. It is very late. The witness has been testifying since ten in the morning.

MR. LANKENAU: This issue cannot be more relevant to the question of to what relief the defendants are entitled to beyond actual damages. And you well know that, you are an expert in this field.

The witness has testified that he noted that a major part of Chapter 10 was almost a paraphrase, a direct paraphrase, and there are at least five other instances in which he discovered paraphrasing. And we now have before us 400 instances of such paraphrasing --

MR. BERGER: Four hundred alleged instances.

MR. LANKENAU: Four hundred alleged instances, some of them paragraphs long.

And you are saying this is too speculative?

MR. MC ANDREWS: He is saying it is late in the afternoon. You are getting argumentative with the witness. At some appropriate point I am

EXHIBITS ANNEXED TO THE FOREGOING

e group the first two years into three chapters, having to do predominantly with physical growth, social growth and intellectual development. This division is mainly in terms of the types of topics which have been studied. It does not mean that these functions occur in separation from each other. Throughout this chapter and the others that follow, the reader needs to keep in mind, the difference between the divisions which are dictated by our methods of study, and those divisions (if any) which occur in the life of the person.

D & 35 for Id

Chapter 1; Physical, Motor & Response Variables

Body Growth in Infancy 146
New born 149
Stages of Infancy 156
General Physcial Development 243
Motor Development 244
Basic Needs 181
Response Capabilities --Perceptual Development 172
Developmental Trends 192?
Individual Differences 69

Chapter 2 : Social Responses

The concept of attachment 208
Socialization in the second year 258
Motives of 2 yr old 265
Cultural differences in Child Rearing
Child Training Techniques (DEPENDENCY)
Add PREDICTION OF CHI OF LATER DEVELOPMENT

ADD INTERACTION

SEE LEWIN IN MISSION also p. 236

(Lets keep AGGRESSION for PRESCHOOL YEARS)

233?

Chapter 3: Intelligence Cognition

Vocalizating 184
Mental Development 192
Piagets system 194
Language 247
Intelligence & its measurment 255

This is from early stages of planning but will give you some overview of where this chapter fits in. Part II + an index of

2, 27

Chapter 1

In the first chapter on infancy we deal with those matters that psychologists have always felt at a very firm "biological" basis. The more we know about infants, the more we realize how hard it is to make such distinctions.

Chapter 2

In this chapter we deal with the interactions of child and others. In the past this has been dealt with mainly in terms of parent effects upon the child. Increasingly we are paying attention equally to the childs effects upon the parents, and to the patterns of mutual interaction between them. Through these the larger cultural contexts are brought to the child

Chapter Three

Much of recent psychology has concentrated on the way in which the child himself puts the world together. Not so much how he is shaped as how he shapes the world. Here attention has been on his cognitive mechanisms for understanding the world about him. ~~[illegible]~~ and his speech inventions for making it meaningful verbally. But as well in this chapter we want to pay attention to his other voluntary behavior, and to his play which seems to be the essence of all voluntary behavior because it has to do with self-initiated ~~[illegible]~~ programs of variation

Deft Ex. 54, Dlm
5/7/74 TWN

EXHIBIT 56 - DOCUMENT DATED OCTOBER 15, 1971 FROM LUMSDEN TO SUTTON-SMITH



October 15, 1971

Professor Brian Sutton-Smith
Department of Psychology
Columbia University
New York, New York 100

Dear Professor Sutton-Smith:

As the new Psychology Editor for the College Department of Appleton-Century-Crofts, I am writing to ascertain your interest in collaborating with us on a new type of project in child psychology. It is our desire to work with the foremost psychologistssin this field, and your name has come to my attention many times in professional and academic contexts.

The project we are proposing would not be very demanding in terms of your time and energy, but it would be a unique contribution in terms of creating a better product for psychology students. We have developed an innovative publishing program that ensures the production of a high quality text withthhe widest possible appeal to both students and instructors.

After you have had an aopportunity to consider our proposal, I would like to elaborate on the specific details offour program. Please contact me by phone (212-689-5700 ext. 449) or by letter at your earliest convenience.

Sincerely yours,

Lynne Lumsden (Miss)
Psychology Editor

LL/cl

CM # 9

**EXHIBIT 57 - LETTER DATED OCTOBER 26, 1971 FROM APPLETON-CENTURY-CROFTS TO SUTTON-SMITH**

Deft Ex 57, Idn 5/7/74 TWM

479a

APPLETON-CENTURY-CROFTS
EDUCATIONAL DIVISION / MEREDITH CORPORATION
440 PARK AVENUE SOUTH, NEW YORK, NEW YORK 10016
(212) 689-5700

October 26, 1971

Professor Brian Sutton-Smith
Department of Psychology
Columbia University
New York, New York 10027

Dear Professor Sutton-Smith:

It certainly was a pleasure to speak with you this morning about our new project in child psychology. Because we could not talk longer, I will try to describe some of the details of our program in this letter. I do hope you will give our proposal serious thought and will become as excited about our new publishing procedures as we are.

In the traditional sense of the word, you would not be required to "write" the book--the actual amount of time you would spend in writing (or re-writing) would depend on your schedule, that is, depending on how much time you chose to devote to a particular idea or area of the basic text. Your name would be the only one credited as the author. There would be no consulting editor, and therefore, no other person would receive a royalty. However, your role and commitment would be similar to a consulting editor's as far as the amount of actual writing time. Your role would be more like a co-author's for the time devoted to thinking about the subject and planning the project.

Virtually, what we are proposing is a totally new way to produce a child psychology textbook that will be used by hundreds of thousands of students. The book will be on a two-year-revision cycle so your financial benefits from the project would be on-going for the next ten years, at least. Your contribution to the development of this project would be your academic background and achievements, your critical and editorial skills, as well as your ideas and strong feelings about the approach and emphasis of such a book.

Appleton-Century-Crofts will contribute extensive market research on the basic course and on the leading competition, compilation of materials and primary sources, writing and rewriting, all art work, permissions, design, manuscript development (editing and copyediting), promotion, and our total sales effort. In addition, we will commission specialists to prepare end-of-chapter or end-of-text materials such as bibliographies, indexes, glossaries, appendixes, suggestions for further reading, or any other apparatus that seems beneficial for the sales of the text. We will also commission the preparation of any supplementary materials that you and our editors deem necessary such as an instructor's manual, student guide, student workbook, test item files, answer manuals. We would also guarantee that such materials would be published simultaneously with the text, when they are most useful as selling points as well as teaching aids.

The entire project would require only a few hours a week for you to consult with us over a span of four to six months. A good part of the consultation work will be accomplished over the phone or through the mail. The total development time--from the day you sign the contract until the day you receive your complimentary copies--would be about twelve months. We would fit our project around your schedule and would not conflict with your teaching, administrative or research commitments. And in one year's time you would be known as the sole author of the leading child psychology text on the market.

We know our process works, and we know other publishers are trying to find out how to imitate our methods. Because of the overwhelmingly enthusiastic responses we have been getting from prestigious professors, we are certain that they understand the economics of publishing well enough to realize how lucrative this type of project will be, given the little time and effort required of the author.

Please do not hesitate to contact me as soon as you have been able to give further thought to our proposal. I would welcome the opportunity to answer any questions you might have about this project. To help me make my final decision on the perfect author for this project, I would greatly appreciate your sending me a copy of your most recent curriculum vitae. If you later chose to work with us, your vita will be given to our advertising department to help them in promoting the text. If possible I would like to show you our process in action and have you talk with our marketing, development, or promotion directors. I am looking forward to hearing from you shortly and to meeting you in person one day soon.

Sincerely yours,

Lynne L. Lumsden

Lynne Lumsden
Editor
College Department

LL/cl

EXHIBIT 58A - AN AGREEMENT DATED NOVEMBER 15, 1971

Dft Ex. 58A 5/7/74 TWM

481a

AGREEMENT

This AGREEMENT made this fifteenth day of November 1971, between Brian Sutton-Smith, Columbia Teachers College, New York, New York hereinafter called the AUTHOR, and Appleton-Century-Crofts, Educational Division, Meredith Corporation, an Iowa corporation, hereinafter called the PUBLISHER.

1. In consideration of the premises, the AUTHOR hereby exclusively grants and assigns to the PUBLISHER, book publication, translation, abridgement, anthology, selection, serial after book publication, book club, mechanical, visual, sound reproduction and recording rights, adaptation for commercial use, motion picture and dramatic rights and all other rights, in a basic text, student workbook, and teacher's manual (hereinafter referred to collectively as the Work) now tentatively entitled CHILD PSYCHOLOGY in all forms of merchandising and commercial uses in any present or future media for world publication for the term of the copyright and any renewals. The PUBLISHER agrees in its own name and at its expense to copyright the Work; the AUTHOR hereby agrees to apply for the renewal of each such copyright prior to the expiration of the first term thereof and to assign the same to the PUBLISHER.

2. The AUTHOR represents and warrants that the Work has not heretofore been published in book form; that it is original except for excerpts from previously published works for which permission to include has been secured from copyright owners thereof; that it contains no matter which is libelous, unlawful or which infringes upon anyone's common law or statutory copyright; and

that he will hold the PUBLISHER harmless against costs and expenses of any suit, claim, demand, or recovery based upon any claim of libel, unlawfulness, or infringement of copyright upon publication of the Work. The AUTHOR agrees that he will not in any wise be interested in any book of similar character tending to interfere with or injure the sale of the said Work during the continuance of this agreement.

3. It is understood and agreed that if, at any time during the term of this agreement, in the opinion of the PUBLISHER the Work needs revision, the Author will revise the Work or supply any new matter that may, in the judgment of the PUBLISHER, be needed to keep the Work up to date. In the event of the AUTHOR'S being deceased or unable or unwilling to revise the Work or to supply new matter when required, the PUBLISHER may procure some other person or persons to revise the Work or to supply new matter. The PUBLISHER may pay compensation to such person or persons in the form of a cash payment or of a royalty; such compensation will be charged against the royalties accruing to the AUTHOR on the new edition or editions.

4. The PUBLISHER agrees to publish the Work at is own expense in a style and manner selected by it and to make payment to the AUTHOR as follows:

(a) On sales in the United States of America, when the discount does not exceed thirty percent (30%), the following royalty:
Three percent (3%) of the net revenues on all copies sold by the PUBLISHER.

(b) On sales outside the United States of America, when the discount does not exceed thirty percent (30%), two-thirds (2/3) of the royalty specified in Article 4 (a).

(c) On all other sales, either of bound copies or of sheets, when the discount exceeds thirty percent (30%), a royalty of one-third (1/3) of the royalty specified in Article 4 (a).

(d) If this Work is published under the imprint of the PUBLISHER in a special edition for sale outside the United States of America, and at a list price no greater than two-thirds (2/3) of that of the primary edition, a royalty of one-third (1/3) of the royalty specified in Article 4 (a).

All royalties payable on sales under a, b, c, and d above, shall be computed separately on the basis of their several terms.

The AUTHOR shall be paid twenty-five percent (25%) of the net proceeds received by the PUBLISHER from the license of any rights set forth in Article I hereof, including the right of produce, reprint, foreign, book club, or any other special editions.

No royalty shall be paid on copies given away or sold at or below cost.

The PUBLISHER agrees to render to the AUTHOR semi-annual statements of account to December 31st and June 30th of each year, on the following May 1st and November 1st respectively, and to make settlement in cash at the time when each such account is rendered.

5. The PUBLISHER agrees to furnish the AUTHOR, free of charge, ten (10) copies of the regular edition and additional copies desired for his own use at thirty percent (30%) discount of the list price.

6. The PUBLISHER agrees to pay to the AUTHOR as an advance against royalty seven thousand nine hundred ninety nine ($7,999) upon receipt of a signed copy of this agreement.

These advances against royalty shall be reclaimed from royalty due the AUTHOR beginning with the first sale of the Work and continuing until the total sum of seven thousand nine hundred ninety nine ($7,999) has been reclaimed.

7. The PUBLISHER agrees to pay to the AUTHOR as a grant-in-aid up to one thousand dollars ($1,000) for expenses incurred in manuscript preparation. This amount shall be payable upon receipt of signed invoices by the AUTHOR.

8. It is understood and agreed that if at any time during the preparation of the manuscript materials for this project, the AUTHOR is, in the judgment of the PUBLISHER, unable or unwilling to perform his role, the PUBLISHER may arrange for a co-author or co-authors to assist the PUBLISHER with the preparation of the manuscripts. The PUBLISHER may pay compensation to such co-author or co-authors in the form of a cash payment or of a royalty; such compensation will be charged against the royalties accruing to the AUTHOR on the new edition or editions. The PUBLISHER, may however, continue to use the AUTHOR'S name as the sole author of the Work provided that the AUTHOR is allowed to read and examine all manuscript and illustrative materials throughout

the development process from the initial outlines and manuscripts drafts through the first proofs, and provided that these materials are substantially acceptable to the AUTHOR.

9. The AUTHOR agrees to permit the PUBLISHER to use his name as the sole author of the Work, both in the Work itself and in the promotion of the Work.

10. The PUBLISHER at its option may assign all or any part of this agreement. The AUTHOR may not assign any part of this agreement except the right to receive royalties; before such assignment may be made, written consent of the PUBLISHER must be secured.

11. The stipulations and agreements herein contained shall apply to and bind the heirs, executors, administrators, and assigns of the AUTHOR, and the successors and assigns of the PUBLISHER.

12. The laws of the State of New York control with regard to this agreement.

Brian Sutton-Smith

Brian Sutton-Smith

Appleton-Century-Crofts
Educational Division
MEREDITH CORPORATION

Charles R. Walther

Charles R. Walther
Vice-President

Deft Ex 61, Alden
5/1/74 mm

EXHIBIT 61 - LETTER DATED JULY 22, 1972 SUTTON-SMITH TO JULIE SMALL



July 22nd,72.

Miss Julie Small,
Ed tor, Appletonz-Century.

Dear Julie,

I find this first draft of chapter 10 totally unsatisfactory; the major reason being that it is an almo t direct paraphrase of MCK and SHC. Guidance and hints from such other books ,yes; but co yin. no. This writer ha got to go. I have not felt the other s were like this but did a good job of assimilating a diverse mass of material. But this particular effort has illegal overtones and I will have nothin. to do with it. While reading this effort I felt the need for a lawyer. This is not what the enterprise was meant to do. Joe Church was telling me the otherday how they had to take action against Psychol Today for a similar copying from their text.

I believe I asked you earlier for a very close watch on this type of paraphrasing. I insist again that one of your workers go through the chapters and give us a sentence count or some such. Whats the good of losing the whole effort because of this sort of behavior.

Yours sincerely,

Brian Sutton-Smith

EXHIBIT 62 - LETTER DATED JULY 26, 1972
FROM SMALL TO SUTTON-SMITH

Dept Ex 62 Dale 5/7/74 Rpt

APPLETON-CENTURY-CROFTS
440 PARK AVENUE SOUTH, NEW YORK, N.Y. 10016 212/ 689-5700
EDUCATIONAL DIVISION • MEREDITH CORPORATION

488a

July 26, 1972

Professor Brian Sutton-Smith
62 Beechwood Terrace
South Yonkers, New York 10705

Dear Brian,

I received your letter of July 22nd after the discussion we had yesterday when you were at Appleton. You stated in your letter concern about possible plagiarism in Chapter 10 from the text by Mussen, Conger and Kagan and from Ginsburg and Opper. I wish to review the discussion we had yesterday concerning this matter and the agreement we reached on the material in question.

1. The material on problem solving (which you are concerned is taken from the MCK text) is based largely on one of the leading investigations in this area of research, that of Jerome Kagan and Nathan Kogan, "Individual Variation in Cognitive Processes." This article appears in Mussen (Ed.), Carmichael's Manual of Child Psychology, 3rd edition, which as you know is one of the major sources of review of the literature in the field of Child Psychology.

2. The Kagan, Kogan article will be acknowledged in your text as the basis for the discussion.

In addition, I wish to assure you that the material is being checked closely against both the MCK and Ginsburg and Opper sources for any possibility of plagarism.

Sincerely,

Julie

Julie Small
Product Development Editor

EXHIBIT 65 - LETTER DATED MARCH 28, 1973 FROM HAFF TO SUTTON-SMITH

Deft Ex 65 Ide 5/7/74 Sum



THE UNIVERSITY OF TOLEDO / TOLEDO, OHIO 43606 / [419] 531-5711

College of Arts and Sciences
Department of Psychology

March 28, 1973

Dr. Brian Sutton-Smith
Department of Psychology
Columbia University Teachers College
New York, N.Y. 10027

Dear Dr. Sutton-Smith

With regard to your new Child Psychology book, the fact that you have chosen to refer to the Haaf and Bell, (Child Development 1967) article on page 123 is indicative of your good judgement among things psychological. However, the artistic modifications of stimuli which appear in Figure 5.3 raises a question about you or your editor's attentional preferences. I rather doubt that our infants would have responded in the same way to the stimuli which you show as they did to the original stimuli. I find it difficult to understand why you decided to perpetuate the error made by Hassen, Carger and Kagan rather than accurately reproduce the stimuli in Figure 5.3 as they actually appeared to the infants and as they appeared in the Child Development article.

Somewhat sincerely,

Robert A. Haaf, Ph.D.
Assistant Professor

RAH/jsc

EXHIBIT 66 - MEMORANDUM DATED APRIL 4, 1973 FROM JOURARD TO WILLEMS



Deft Ex 66, Allen
1/7/74 TWM

4/4/73

A. R. Willems

J. H. Jourard

CHILD PSYCHOLOGY BY BRIAN SUTTON-SMITH
(Fig. 533 page 123)

I had a call today from Professor Sutton-Smith. He pointed out Figure 5.3 on page 123, according to him, this figure has been lifted directly from the Mussen, Couger, and Kagan book. It should have been taken from the original source, which is indeed indicated in the caption of the figure.

Sutton-Smith is a little worried about the implications of this situation. He suggests that we make the correction in the next printing. It's a very minor correction, it has to do with the drawing of the face. I would be glad to point it out.

J. H. Jourard

JHJ/mb

Draft Ex 71, Ider
5/14/74 rdm

Introduction

Theory and Method

(1) I would prefer to begin with the anecdotes that I sent you with which we raise the question, what is it that child development studies. The children themselves ( as the anecdotes show) are not clearly visible under any microscope/. Clearly to understand them we arrive with out own ideas about history, their nature , cognitive development etc. These must first be understood, to know what this study is all about.

(2) For a start why do we study children at all ---here we go into a discurses on the recent growth of dev .psychol .how it reflects the times. See previous notes and last pages of the sibling. The focus being on our own attempt to increase cultural self-consciusness and the availa le of alternative choices, therefore no control of life patterns. We are "explicating" or unravelling the cultural onion. What D F. have chosen to look at, of course, has changed over the years reflecting shifts in this cultural self-consciousness (MCK pp1-4

(3) Recent changes as in 2 above show how much our inquiries are a product of time and place. Not only is the child somewhat inscrutable, we are fairly inscrutable ourselves; driven by a variety of contemporary and historical forces. Lets look at some of the historical forces. Philosophical and historical background for developmental psychology (See my notes on history, particular book by Mason, McV Hunt and Brinder --also MCK pp6-12)

(4) But the child only looks inscrutable. There are reasons for that also. So we look at historical forces to find the development the concept of the child as in aries and Van den Berg etc.

(5) It is from these various roots that our theories and methods' ion arise. What are the major attempts to control the situat

And I want to have stressed here my view that theories such th ories have historical roots (as above) Piaget from biology; learning from physical sciences; psychoanalysis from both. And that they seem to help focus on parts of a large field. They are all micro theories no matter what their intention. Piaget has stre gth for discussing cognitive structure; psycho analysis for discussing conflict; learning for discussing controlled learning. (MXC --- pp 23-27 Each theory is a verbal sy tem that gathers its adherents around certain assumptions and certain data gathering activities, While the adherents sometimes are mo magical about all this, all of us stand to benefit from their intensity if their work is ~~ex~~ scientifically testable.

6) This brings us finally to method, and the fact that despite the inscrutability of child and investigator there has developed a very considerable consensus over the years on how to validate information. Here we go into a bit of methodlo analysis ~~xndxhixxmryxx~~ --the nature of science (pp 12,13,14) the difft types of method in DP , cross-sectional etc (21-22) In the long run all theories have to put themselves to some test for predicting behavior or they presumably fade away, not matter how interesting they maybe in contemporary fashion.

In dealing with theories

"efer to p per given you already by Reese and Overton

Note page 2--- theories cant al ays talk to each other they use s.ch different terms.

Theories rests on more general assumptions (hence or concept of the child and historical background pp 3-4) Different theories think different pr blems are more im ortant --Learning = learning; Ling t = problem solving and Psychoanalysis = neurotic conflict. They have differen assumptions and they try to solve di.ferent pr blems ( pp10*)

Note the practical uses o' different theories pp12-13

The advice is to keep them separate and applythem to the types of problems for which they are most suitab.e.

Notice different meansing of word develo.ment to behaviors and organicists on page 19 ( Deve as descriptive v as theoretical)

Notice in rest of article issue of sta es

ho.ism v elementarism
structure-function v an ecedent-consequent
structural v behaviorai ch nge
discontinuity v continuity

YOUR WRITER MUST MAKE SENSE OFTHIS MATERIAL IN A SIMPLE WAY.

THIS IS THE BEST MODERN STUFF AND THERE IS NO WAY AROUND IT.

IV As our naive ideas have historical roots, so do our more formal theoretical ideas.

Each of these is a rule system which has its usefulness for explaining some sorts of behavior better than other sorts. Theorists tend to be attracted towards the explanation of some human functions, but not all of them. So that most theories do better for some functions than forothers. Some of the differences between theories lie in these differences in focus

See synoptic outline introduction

Exhibit 71 - Five-Page Document Entitled "Introduction" 495

# Models of Development and Theories of Development[1]

Prepared for West Virginia University Conference on Life-Span Developmental Psychology April 1969

by

Hayne W. Reese

Department of Human Development and Department of Psychology

University of Kansas

Willis F. Overton

Department of Psychology

State University of New York at Buffalo

S-R model p 25

## Contents

I. Introduction

II. Models and Theories

A. Models

1. Levels of Models

2. Theoretical Models

a. The Nature of Theoretical Models

b. Functions of Theoretical Models

c. Evaluation

3. Metaphysical Models

a. Characteristics

b. Evaluation

B. Theories

1. The Functions of Theories

EXHIBIT 72 - ONE-PAGE DOCUMENT HEADED, "LEARNING"

Learning

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I suggest we call this chapter learning and leave out the concept of development at this point except as we deal with the distinction (briefly) between the learned and the unlearned.
The outlines below mix what you had with Stevenson

Introduction

1. The distinction between learning and the unlearned. The distinction between learning and development. What learning is Hussen 90-100; what it is not Hussen 101, plus my sheet titled "perspective" .See Reese 66

2. The classical types of learning --conditioning, classic l and operant. See Reese quotes pp66-95. (Keep this brief). Work of Skinner.

History of Learning Studies with Children

Now follow Stevenson: 849-852

Conditioning with infants and young children

neonatal
habituation
conditioning in older infants

Conditioning studies with older children

verbal
drive level
delay of reward
stimulus familiarization
satiation and deprivation
stimulus generalization
extinction
secondary reinforcement
behavior modification

Discrimination Learning

characteristics of stimuli
stimulus pretraining
reinforcement and incentive effects
delay of reinforcement
response biases
developmental studies

Learning Set

Oddity Learning

Transmotition
the intermediate size problem
Reversal and non reversal shift

Verbal Mediation

Probability Learning

developmental changes
incentive xxxxxxxx effects

Concept Learning

EXHIBIT 74 - TWO-PAGE DOCUMENT ENTITLED "NOTES ON THE ADOLESCENT CHAPTER"



Dept Ex 74 Ode—
5/14/74 WRA

Notes on the adolescent charter

1. See my notes. Note that historically the study of the field first emphasized physical approaches because of a focus on biological matters Efforts to explain adolescents mainly in terms of its physical changes abounded (hormones, early and later maturation etc).

2. Anthropology, particularly Mead, introduced a new relativity to the field, and a host of examples suggesting the expected universality of adolescence was not so

3. In this sense psychoanalysis with its universalities was older fashioned but was redeemed by Erikson who ackowledges the relativity of his stress on identity to particular histories, times an places

The review by Muus (copy enclosed) must be read by your reviewer. It shows so beautfilly the malleability of adolescence to the theories of the investigator. If ever there was an age period where theory runs rampant it is this. All of which suggests indeed, that with the coming of adolescent our human subject becomes less and less dominated by certain inevitablities of growth (biological and cognitive), but is more affected by the contents that culture places in these receptacles.

Erikson divides his treatment into organism, society and ego which roughly corresponds to the numbers 1-3 above.

There is a simple survey in Lucy Rau Personality Development which you already have.

Mussen Kagan and Conger's material is pretty adequate but could be condensed except for cognition which needs enlarging and that can come from Opper and Ginsburg. They have far too much on dependence-independence, sex peers, and prpbably too much on alienation, drop outs etc.

Exhibit 74 - Two-Page Document Entitled "Notes on the Adolescent Chapter"

Musgen Kagan etc.

Introduction : Muus the various approaches
Many difft. emphases --why ?

KKYKKCKK
Functional interest
conflict or level or typology; biol or social or ego

PHYSICAL -- summary, rates, hormones, sex difs, maturations, sensitivity
emotional stress

Self concept and body 5
M&C: Boys dont have larger grwoth spurt, but are taller when they get it
Av. menarche age surprisingly universal. affected only by malnutrition.
Importance to self-concept (that is physical dev.) --more impt. reason for stressing it, thnny mostm other reasons. Menstruation --dominantly negative self-evaulation by girls cultural. Nocturnal emisions, no more, but less guil than earlierx.
Sexual Behavior. Big change around 1900 --less since then. Cultural difs.
Main focx are openness and privacy. M & F closer in agreement than used to be
Only about 10% favor promiscuity, Socail class difs ( Film Joe)
Dating Game --a a forerunner for economic system

SOCIAL group case study
dependence -independence in difft cultures
Types of parent child- raining (autocratic, egalitarian etc dual ambivalence
Peer group culture --more forfads ( less for basic decisions, college voctati
Aided by parents who uncertain; scoaibility v loneliness

IDENTITY
Independence --dual ambivalence * Anna Frank
Erikson -his own life; His synthesizing theory (Freud finds conflict irrevocable)
as immigrant
Young man Luther & conflict ( Identity as synthasis)
Confusion Jugend in multiple roles and choices identity

EXHIBIT 75 - ONE-PAGE DOCUMENT ENTITLED
"COGNITIVE AND SYMBOLIC"

Deft Ex 75, Offered
5/16/74 RWM

Theoxxxxxx Cognitive & Symbolic

Vocalization, especially in the infant has clear cut biological roots. But it is also the most distinctive characteristic of man as against other primates, hence its central position in any discussion of cognition. Again lets emphasize that this tripartite is to help sort out the information. The person acts as a whole. But it is true he does feel that the sources of his behavior may lie either in his bodily processes, other people or himself, and it is to these feelings that o r tripartite corresponds.

Note phonemic differentiation in first year--and morphemic differentiation in second year, with sentences coming in third year, is a nice example of hierarchic integration of sub skills into larger assemblies. The same can be said for grasping, looking, etc becoming throwing a ball in the second year.

Lets take normative tables on pp190-191 and add those on 174-17 177; 156-157; 195-196 ; the latter in text --and make a table including all of these phenomena to go at end of these three chapter

Piaget pp194- 195 is much too condensed. Needs a table also with names and explanation. Actually need a table for sensori-motor development; a table for development of object; for imitation

1. sensori-motor development
2. development of object constancy
3 development of imitation and play

Need section on CURIOSITY. Remark back to attention axxx
see article by Jeffrey included

EXHIBIT 76 - ONE-PAGE DOCUMENT ENTITLED "ONE MONTH: REFLEX EXERCISES"

Deft Ex 76, Allen 5/16/74 TCR

I. One Month : Reflex Exercises

1. Sensory Equipment (M. chapter 1) (Mussen: Chap. 4. Response Capacities) Concern here is physiological psychology--acuity

2. Reflexes (coughing, blinking etc). Most equipment present. Have to learn usage.

Discriminable responses
Semi-Automatic Responses ( Sucking, Grasping, Eey-Pursuit)
Random restless behavior. PIAGET ----concern here is behavioral significance

3. Change from passive responses to active searching behavior. Baby most approximates psychoanalytic conception -oral dominance

4. Norms: lifts head from shoulder — tho see Burton White objection
crawling movements when prone
stares at large objects
retains hold of ring placed in hand
holds up chin while lying on stomach
thumb in mouth

(Iowa Child Welfare Research Station)

Comments
heads flop around like a loose sack.
Supported along arm etc

5. Emotions at Birth

6. Evidences for stimulus reinforcing (most active in dim light, les in bright--quiet arouses); maxt

7. The importance of the state of the organism (Peter Wolff)
states of sleep, states of being awake, in relation to effect of stimulus

8. Berlyne's approach in te ms of level of arousal and type of stimulus variable ( intensity ?

9. The law of initial value

10. LORENZ - emphasis social relations are primary, not secondary
11. HARLOW - ... that cradle is not sole basis for sociality

BRACKBILL & THOMPSON . FREE PRESS, 1968

11 _____

5-7 Notes 1 Hoft Ex 77 for Id 5/16/74 mlm

Physical Cognitive, intelligence and language development

Cognitive

Everyone agrees that this is a transitional period in childrens thinking from the diffuse animistic thinking of 2-4 to the more systematic thinking of the seven year old which makes him capable of reading and arithmetic. This is the age when children,s thinking as well as their behavior becomes sufficiently disciplined that they can benefit from schooling. Throughout most cultures and most of history, the age of seven has been the beginning point for adult like serious preparation.

We may approach their thinking in various ways.

1. In information terms ( encoding, memory, hypothesizing and evaluating as do M.K. & C. pp 430-447
2. In terms of the development of logical principles as in Piaget's account of conservations. Ginsberg & Opper chapter 4 , 117-180 and MKC 447-458.
3. In linguistic tomms --words play a systematic role in thought by the end of this period. Language also becomes private speech and a facilitator of thought. See articles by Flavell and Kohlberg (enclosed).
4. There is also another type of consciousness developed, namely the consciousness of representation. The child has been representing in imitation, play and language from about two years. Now he knows he is representing ,that is, creating representations for others. This is the birth place of art. Such representations are drawings, story telling and writing, puppetry and acting, and in sociodramatic play with and for other children.
5. Sheldon white characterizes the shift as one from associationistic to structural thinking and summarizes the nature of the shifts on pp. 195 onwards. This is a highly important article and must be incorproated.

Note the extracts from Stone & Church and Jersild are again included bycause they say things rather simply. We need the systematic character of Kagan et all however, within which their type of expression is more suitable.

EXHIBIT 78 - ONE-PAGE DOCUMENT ENTITLED "ROLE OF EXPECTANCY IN FOCUSING ATTENTION"

Defl Exh 78, Admitted 5/16/74 Tr



role ofexpectancy in focusing attention.

Couldn't find another study, only more Maccoby references and it's probably the same couple of studies reviewed in different places. Suggest supplementing MCK p 433,434 with discussion of same studies in Pick & Pick in Mussen 1970 p 821 2nd column and Kagan & Kogan in Mussen, p 1295

effects of distraction, anxiety, etc on memory. Again, couldn't find anything, suggest supplement MCK's discussion of Glaser 1963 with Kagan & Kogan's p 1303

for changs in basis of classification, I can find the studies but the issues are complicated enough and enough studied (and the studies tend to be long and with too many variables for feasible short summaries) that I think it would be better to use Kagan & Kogan's discussion of this - p 1305 2nd column-1309:
including definitions of the kinds of concepts 1305-6 & paragraphs numbered: 1, 8,9, 12(at the bottom of col 1, p1308), 13, 14.

EXHIBIT 79 - FIVE-PAGE DOCUMENT ENTITLED "IMAGINATIVE LIFE, DAYDREAMS AND DREAMS"



Dyff Ex 79, Feldman 5/16/74 mm

Imaginative life, daydreams and dreams

See my article on Expressive Profile

See also chapter by Jersild, who is particularly good in this area --see especially Imaginary Companions p.392 which are important in this age period
See also on dreams p.400.

The general point now taken for most of imaginative life as well as play is that it is not just compensation and escape, although it can be that. It is also problem solving and consideration of possibilitiexs which can be of use in the future. Tho the incentive for all lies more in the childs anejoyment of his own autonomy, cognitive direction and affect alternations--relaxed bu exciting.

WE SHOULD ONLY TAKE FROM JERSILD HIS EMPIRICAL MATERIAL —

Emotional Development and Self-Awareness

Self-Awareness

Shaw & Alonso

For Emotional Development --Jersild has always been the leadning child psychologist in this area. He writes easily

Possible selections would be table 14 p.318
laughter p. 323
age trend in fears p.333 thru 348
anxiety 353
anger 366

14, +7

**Exhibit 79 - Five-Page Document Entitled "Imaginative Life, Daydreams and Dreams"**

How do children between five and seven become socialized to their peers and able to be acceptable in public situations ?

1. They copy their parents and other children. We need to remember that their ability to cpy the behaviof of others around them is way ahead of their ability to understand it. Thus they can often behavr reasonably in church or school but not know what it is all about. As a measure of what they have to acquire during these years we might cite Erving Goffman's work "Behavior in Public Places". They have to learn not to scratch, pick their noses, spit, belch, stare. With otherxx children of course, they can still do many of thesex things. And staring at others is a major source of anncyance at thistime. Getting in and out of children's play groups becomes an art. (See Boundary Behavicr, by me --In Childs Play )

See also Hartup for modelling after peers ( 309 , 422 ff. 425 ff.

2. Reinforcement. They are rewarded forappropriate behaviors ( Hartup)

3. They suffer what Susan Iszacs called "educational friction." They cant get away with all their egocentric wishes. If they dont give satisfaction to other players also, they have no one to play with. The motivation to play together is so strong, that it exercises a controlling force against complete arrogance.

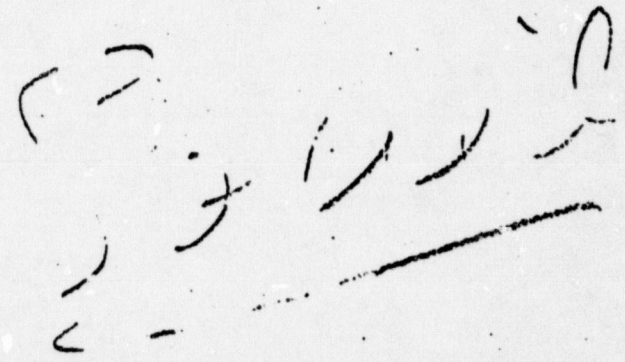
4. They share common fantasies from their home and outdoor experiences and endlessly play out constructions of these (houses and trucks). These days furthermore, they have television as a source of common ideas for social play ( See Also Expressive Role below for VICTIM-VICTIM FANTASY)

5. Occasionally they are brought together by a mutual attack on a newcomer or outsider. This sort of play is not very pleasant, but is the beginning of that human scapegoating which seems unfortunately one of the universal bases of human grouping.

Exhibit 79 - Five-Page Document Entitled "Imaginative Life, Daydreams and Dreams"



Social Development, Emotional Development, Play, and Imagination



Social Development

1. Use Hartup account for more systematic approach, allied with materials from MK & C ALSO READABLE VERSION ✓

2. Add older Susan Isaacs materials for a better flavour of what it is really like ✓

Also the materials from Valentine most of which came ultimately from gesell ✓

4. I want to see that more on power gets added. See materials from Susan Isaacs. Also important paper by Daniel Freedman called the "Development of Social Hierarchies". Quote this at length it is very good. (I need it back --zerox it please) ✓

5. What types of social improvement do teachers look for between 4 and 7

See list of preschool program and behavior objectives ✓

6. SOCIAL DEVELOPMENT IN COGNITIVE TERMS (PEER GROUP SOCIETY AND GROUP)

Play life

1. ~~Importance of dominating fantasies -- see Expressive Profile~~

2. Illustrative play of sociodramatic, exploratory, constructive and testing sorts --See sociodramatic modes.

3. How are we to describe games that begin to be important from about 5 years. Need a language that is appropriate.

See my article on a play sntax in Childs Play

4. Enclosed find first stage in development of acceptance-rejection games and approach-avoidance games . These are traditi nal games ✓ usually played at this age level and this analysis gives some idea of thetypes of learning that are occurring. A full scale account of the theory underlying this description of games will be presente in the next section when we deal also with cross cultural materials and games become truly the independent form of the peer culture.

**Exhibit 79 - Five-Page Document Entitled "Imaginative Life, Daydreams and Dreams"**

What are boys doing in the meantime. See Freedman s article. Also recognize that boys are busiby playing games of fantasy contest involving cops and robbers, martians and earthman etc. Here they show their fantasy identification with culture heroes, and pretend they are men of courage and heroics. A few years later, they will be required to show real courage in ball and running games. For the meantime, they can test it out in fantasy. At the same time also, like th gilrs they have many sociodramatic games, they more often involving the motor world

EXHIBIT 80 - TWO-PAGE DOCUMENT ENTITLED "YEARS 8 TO 12"

background reading



Years 8 to 12

Two major emphases throughout. First the growth of control through rule systems. The child now can behave socially, and intellectually within socially learned rule systems. This is illustrated cognitively by Piaget, morally by Kohlberg and in games by my materials. Having learned the rules of the game, in a metaphoric sense the child can establish a society with peers (there are codes and rules--See Peter Opie--The Language and Lore of Schoolchildren (ENCLOSED); he knows the rules for sex role identity, he knows the first stages of Kohlbergs morality, he knows what he must do to achieve in school to be accepted by teachers and adults.

In sum, I think there is a real case for talking of 8-12 as the period of practising rule governance. From 4-7 these systems were being established. After 12 the systems will be united by more abstract considerations. Practical rule governance

An important and second major emphasis, but less crucial, is the development of the self system from about 9 years of age, Here questi of role taking insight, self perceptions become important.

Deft Ex 80, LB
5/16/74 WR

**Exhibit 80 - Two-Page Document Entitled "Years 8 to 12"**

"eadings below follow Mussen, Conger, Kagan, with added emphases by me. Reference to M. is to Mussen Handbook enclosed.

Chapter 12

Physical

Tanner in Mussen ( is mainly about prenatal and adolescence A weakness here. Need more data. Most books dont have much to say about this periods relative stability in growth trends, but of course by 9 puberty is beginning--the growthsurge etc. so there could be material about pubertyi this chapter.

Cognitive : I favor giving priority to Piaget's account. See Opper and Ginsburg pp86-180 and Flavell in Mussen p 991 onwards when he deals with research on the concrete operations. This is more recent and more research oriented than Ginsburg.

After dealing with Piaget, then some smaller scale attention might be given to the alternative ways of looking at thought by others --the encoding, memory, hypotheses etc which NOT give a major role. Stress rule systems throughout

Intell gence : Major reference here must be Baylexy in Mussen. Use as chief source.

Note in dealing with classification under Piaget, my applicatio to children s riddles (Enclosed)

Chapter 13 (social-personality)

Again stress acquisition of rule systems.

Most obvious in Games ( See enclosed materials on games of min Eifferman on sex differences in games etc. Use games to make point that chil en are independenly anquiring rules. See also book by Opie enclosed. Great examples of codes etc

But evident too in morality ( Enclosed article by Kohlberg) Also Hoffman in Mussen p.601

Activities with peer group ( see enclosed materials by Jersild and Stone & Church)

Sex role rule systems ( See Sex & Identity --l[illegible])

Personality

Determinants in Family

Siblings ( See The Sibling --last several chapters)

(Jersild encl.) In school -creativty in Mussen p.1211

Socioeconomic ( See Hess, in Mussen p 457

The Self ( Jersild --Personality)

Anecdotes about Motor Norms Exhibit 81 5/10/74 RM

Goes with chapter 1 (The maturation of motor development pp173-179 & manipulation

1.

First Month: In the first weeks of life parents are som times worrédd there child is cross-eyed. The baby's eyes do not always co-~~xxxxxx~~ordinate to focus on an object properly, which is one more example of how much learning goes on in even the most basic responses in the first weeks of life.

2. Careless fathers sometimes pick up babies without laying their head on the hand at the end of the arm, and their head flo s over like a partly filled flour sack. Not until the ~~xxxxx~~ fourth month or so does the baby develop the strength to be able to hold his neck up independently.or parent support. Fear not the head will not fall off though that's how it sometimes seems. This might be called the rag doll phenomenon

Second month

1. Sometimes while kicking feet th ugh carefully held in bath, a drop of water splashes on her face; she gasps as if drowning . She won't.

2 Eyes follow a moving person in a jer.y way, like some ancient bird, that can only ~~fixxxx~~ fixate on one spot at a time . The head fixes the moving object, suddenly switches and takes another fix; pauses and then again switches for~~xx~~ another fix etc.

Fourth Month

1. Like Frankenstein the hands can now close together on an object both arms extended jerkily towards the prey ( Is this where we get our stereotypes about monsters ?)

2. Thumb is now opposed to other fingers which like a nipper can now take a firm hold on surrounding objects. Particularly if the baby's fingernails are not clipped she will tear away at your nose taking off some skin in the process. She loves grasping your hair as~~x~~ you lean over. Because she can also sit on your lap, with some independence, the back now being strong enough to hold the head up, she can also reach out and take hold of the table cloth or a plate, and with a strong movement tear it all off onto the floor.

3. This is the time too when laughter bursts out at sudden changes in your position. You lean over but thrust your head into her stomach, instead of ,as usual~~x~~, talking.

4 Gently throwing the baby in the air will in some babies prove enjoyment

Sixth Month 1 Now with thumb and first finger opposition, the baby grasps a spoon and bangs it on the table and on the plates. The mother valiantly holds the baby on her knee but out of reach of most things. 24#2

Or the baby in the high chair bangs and bangs with the grasped object spoiling everyonek elses dinner while enjoying her own new power to grasp and to hit an object with the thing grasped (as secondary circular reaction to Piaget).

2. Bends over with its flexible body and examines its toes, even pushing them in her mouth. She can now sit up and find these things in front of her. Bettelheim talks of children at later age levels so disturbed that every morning they check up to see if their feet are there. For the normal child apparently he checks in his feet at about six months anddoesn't have to worry about that later on.

Nine Months

(1) Thunk and first finger opposition has become quite precise and the baby enjoys crawling around the floor picking up tiny pieces of fluff from the carpet or dropped cereal from under the sofa. There is much small debris left to explore in mostarms, and that means, to put in the mouth, in most cases.

Twelve months

(1) Now stands up with support from furniture. May take a step or two ,then make a beautiful V shaped backwards landing onto his well stuff diapered rear end.

Eigthen Months

(1) Backs onto the toilet like a truck driver entering the meat works. Looks behind to ~~xxxx~~ check out angles and backs onto seat.

(2)Can now spit out offensive materials. Until now, quite often regurgitates food caught in upper mouth or throat. The quick mother reaches in with hooked finger and drags it out when she sees it coming; otherwise it spouts forth in a perfect arc onto the surroundi Dinner is sometimes saved by pushing a bowl in the path of the stream In later life on ship voyages, many adults would wish for such an ability to let the offensive material go so easily.

See under some Gesell Norms for motor development and a statement about thestages of acquistion of new skills. Bruner - his recent work adds, that when the new skill is acquired, it is then usually combined into a higher order pattern quite spontaneously immeidately.

**EXHIBIT 82 - ONE-PAGE DOCUMENT FROM JULIE TO BRIAN**

Deft Ex 82 5/16/74 JNM



Julie,

This packet includes

1. A statement on the first two years
2. Organization of materials from Mussen, Kagan etc.
3. My previous summary of period
4. Some new cross-cultural materiasl from LEVINE (Mussen) for social chapter
5. Some material that shows fear of stranger is not much of an index for attachment chapter 2
6. A small piece on object constancy to go with chapter 3 cognition showing it depends on social relationships
7. A book by Bruner on Voluntary behavior which goes in the cognitive chapter.
8. A section of material on PREDICTION ,which should go with the social chapter at its end. Or pehhaps as a cocnlusion to the three chapters

Brian

Dfft Ex 83, Adm 5/16/74 Rm

SOCIAL DEVELOPMENT

Mussen etc have good coverage of faces, babling, smiling, crying and sucking. Tho put babbling in third chapter.

Attachment & Dependency

See papers by Lewis, Ainsworth & Rheingold - 2 others
See article by Maccoby (enclosed) for best overview - Rose better rev for intro lev
For Dependency see Chapter 7 SIELING (enclosed)

Ethology

article by Hess (enclosed) - not enclosed.

Maternal Deprivation

Thompson p 603 (enclosed) - not enclosed

including Schaeffer theory of perceptual deprivation to 6 months and people or affect deprivation thereafter

NEED SECTION ON INFANT STIMULATION.

Thompson on early experience (enclosed) p609

CHILD TRAINING

Use McCandless
Need Cross-cultural materials

Goldberg enclosed - good
Also chapter "Language of Anthropology" from Sex & Identity

MOTHER*-CHILD SYNCHRONIES

1. M_ paper on comparative studies of parent-offsrping effects
2. Also animal papers by Harper and Rosenblatt & overview by Bell - good

Defft Ex. 84, [illegible]
5/16/74 Tues

TEACHERS COLLEGE COLUMBIA UNIVERSITY

NEW YORK, NEW YORK 10027

Ages 4-7

Julie,

I have given you plenty on sex role development with our own book, another copy of which I enclose.

But just in case you need more references in that areas, I am including Mischel's article from the Handbook.

A.F. Some of this looks good for 2-3 year old. [illegible]

Ages 2-3

I am including a piece from Feshbachs article on aggression having to do with age and sex differences. I think that's enough to cover the case.

In socialization

My assumption is that you will follow MKC fairly closely, but up date it with the material from Child & Zigler enclosed

There are chapters in Mussen HB that are also relevant which I haven't gotten to you yet--they are not easily digestible. Thus Mc Neill on Language
Mischel on sex typing ( I like our book better)
Feshbach on aggression
Perhaps we need to put more in on social class effects on socialization
Hess --social class and socialization
De Vine --cross-cultural

But all these chapters require some digesting, and I'm working on that and will let you have them appropriately marked

EXHIBIT 85 - TWO-PAGE DOCUMENT ENTITLED "CHAPTER 9 NOTES SS"

Deft Ex 85, Admitted 5/14/71, TLM

Chapter 9 notes SS

. Someone has to look at all these chapter introductions, which often read like book introductions. Need an overview to see how they all sound. I think we tend to have each written like it was the beginning of the book.

. Locke in particular specializes in flowery, often quite erroneous with respect to the age level, introductions. So check to see whether we alternate flowery with sensible introductions

. Locke also like to give advice and take a definite, usually oversimplified viewpoint. His boiling down of complex ideas has an enfeebling effect I often think --consider the 5 points on page 4. Lets give the references

. He also likes the slightly magical term "researchers"

. By the way, do we have any way in the preface of acknowledging the"help" of your gust team at App/100. The help of .. ...is gratefully acknowledged :

. We are into methodology here --is this the first place --what overlap is there. I have a feeling we've already done some in the first chapter. p. 6 . This is well done, and shouldnt be dropped, tho it might replace some of chapter one. Anyway make the comparison.

. p 11 -we are in to chapter 9 (What socialization did we do earlier on the 2-3 age level ? Were our topics there the same as here etc/.)

. p12 --now what is the relationship between these Fels maternal behaviors and the five home variables already introduced on page 4. Are they the same, different, or what ? Cant just leave the matter there. First study should have been cited (it was not), so that some attempt can be made to bridge the gap.

one thing about Locke is the feeling that its his own words.

9 p.15 --I am bothered again about whether we have elsewhere surveyed all the other socialization processes

p 22 etc--this may rival Spock these general descriptions but they dont have a hope against MCK. Such a contrast between this writing for happy parents and the general aim of the book. I trust a research tone will be restored/. In general its adequate but rather low level stuff. His struggle to manage this data is not impressive to me.

p 27 -into dependency I begin to feel that perhaps a guiding line for the subheadings is the 5 five factors on p g. 4-5. Is it ? Not clear that it is, but if we are to use variables like retristive-free, warm-cold throughout lets make this clearer with illustrati ns --a table etc in the first pages, and lets say that what we are going to do.

By the way I see no discussion of the distinction between motive and behavior. Some writers make none; othe s do--I sort of transcended it converting his stuff into srecific and general see MCK p341

p 33 --lets not have this future research bit so endlessly repeated. Locke has an ambivalence about research, duns it but looks to the future. He prefers biblical authority ofsome sort I guess --assuming his wri is a sort of projective test.

page 56 --very much need a summing up of all the factors in this very complex account of aggression.

In sum, we see that aggression is contributed to by many factors in the child's situation, and that it is not to be accounted for solely by theories that stress one alone of the major variables whether modeling, frustration, displacement etc. Instead these and other variables such as.....

are important

1 [Shattered Rest
↓ Dependen
2 ↓ Fear · Aggressor
3

4 Identified
5 Conscien
6 Self. Comp
7

Draft Ex 86, Ldm
5/16/74 MM

For e ilogue

Lets say something about the different views of maturity Some general reservations with respect to determinants as on page 752 But what is maturity

For Freudian and Eriksonian views it is overcoming conflict. This is im ortant. It is not not having conflict; it is surmounting it. Parents who try to guard their children from evils --such as competition pronography etc. may not by helping them grow (not that such things need be thrust upon children) .One can see the whol of life as a series of conflicts to be overcome.

Put another and more existential way--we c[illegible] ourselves by our own choices . We come to live with the choices we have made. If our choices are easy and involve little we are diminished as a result ; if our choices are somewhat risky and involve greatr effort we growx as a result It isremarkable how most of us agree with such statements ad hoc, but in the course of such choices often prefer to prevent children from taking the chances. We err on the side of over protection, than on the other. Generally we can be freer when they are younger than when they are older. The only guarantee that any one can make "right" choices ( there is no final guarantee cause life contains too much chance) is that we discussed and argued his choices with the child at each point. While young we often had to make choices for the child--but there were always areas where the child's choices could be made real ( clothes, toys, etc) and in those areas we first develop the habit of rational discussion of alternatives. By late adolescence you have left the right to such discussion, but seldom the right to choose for the adolescent.

Piagets theory teels us little bbout maturity apart from its capacities; tho Kohlbergs moral levels certainly challenges conventional views of what is good enough. Eriksons inegrity and his generativity should be expanded upon a litt.e He is trying to say that the mature

[illegible]

said. Jung's notion of maturity not coming until the 40's or later as we begin to put ~~them~~ into one peice the various specialized emphases of early maturity is worth mention. He says we tend to opt for one or other psychological types ( empiricistic, intellectualist, emotive) in early adulthood, but that leaves us the problem in middle age of reconciling those necessary elements we have left out. As we become dominantly rationalistic we may have problems with listening to our feelings ( a widespread problem judged by all the sensitivity groups). etc.

There must be some sort of a rule for parents, which says, first I decide whether this decision is my responsibility or the childs,then if it is the childs I agree to live with it, but argue that I have a right to appear in court with my reasons for or against actions. And if this has been done with fairness thruugh childhood, I will still be heard out in maturity. If not, I will not be so heard.

Still we need to stress, that this is putting it allrationally. There are many moments of adult anxietyand adolsecent egocentricity when affairs do not go smoothly. Amd for these only patience and tolerance and a real concern for the other person--a caring or generativity as Erikson would put it, will see you through

Titles Intro -

Years four through seven (4-7): Transition to Childhood.
Collectivities .

Introduction

Between two and four children's social behavior has been guided by association and habit; their thought by idiosyncratic experience and images. Between four and seven children increasingly move into the public world of the communities in which they live. They become more capable of preserving the decorums of the adult group. They learn what it is to have rules and to abide by them consistently. Just as in the case of the little six year old who came home from his first morning at school and informed his mother proudly, "I have a rule." "What it," she questioned, "I have to be back by one o'clock," he replied. Again, they no longer play mainly amongst other children, they learn to fashion groups of their own with their own routines and rules. They systematize leadership in these groups. As Daniel Freedman of Chicago has found out. If you ask four year olds who is the toughest they all say that they are. But if you ask seven years olds, they are able to tell you. They can reliably rank their toughness in order. By seven they know who is boss, and as a result much of their earlier problem in getting along together and co-operating is gone. As a result of this achievement, peers become increasingly important to them throughout this period.

In the present chapter we concentrate on their new social masteryxes, on their shift from primary ties (with the parents) to secondary ties with peers and other adults. In the next chapter we focus on the many cognitive changes with accompany this shift, in particular the acquisition of the first concrete operations, which are the first signs of logical thinking about practical matters.

This was done in preceding chapter

The power of the four to seven year old groups' social life is indicated by an experimentx of Ferenc Merei ( ), in which the leaders of several nursery school groups were separated from the rest for several months then reintroduced. In the meatnime the remaining group had developed new leaders, but more importantly they had developed quite clear cut traditions as to what their favored play activities and their favored sequences of behavior (first fire-engines, then houses, then blocks etc). When the older leaders were re-introduced most ofthem were quite unsuccessful in influencing the groups traditions. Although they tried to boss around their old group, they were, in general, unsuccessful. Except, that is, for a few ofthem, who imitated their old group, and then after learning how to follow its routines, they began to make moderate suggestions for change until they again became leaders

(Lets abstract this article from Human Relations about 1949)

The importance ofthis study is that it shows that already between four and seven years children can establish a social order oftheir own and that the groups power is quite considerable. Rather conservative routines become a mainstay of the groups behavior.

Lawrence Locke
2/22/72 Rewrite: 3/17/72

Comments: jrle S-S.

Chapter 5

Dft Ex 89 Ider 5/16/74 TWM

15,000 words

1st words = 10-15 months
1st sentence = 18-30 months
walking = 12-15 months

Physical Growth in Infancy

In this section, we will explore the first two years of the infant's life -- from birth to the brink of the "autonomous twos" ~~"terrible~~ twos." In terms of behavior, chapters 5, 6, and 7 will follow the child from his first ~~lusty, out-raged~~ adaptive cry in the delivery room to his first spoken sentence. Just about the time he begins speaking in sentences, of course, he also is running about the house, ~~scuttling~~ staggering up stairs, ~~scaling~~ bouncing on sofas and climbing chairs. Because the child begins talking ~~and walking~~ near the end of his second year, we consider the time from birth to approximately two years of age as a convenient unit for study. The chapters in this section will deal with the physical, cognitive, and social development of the child during his first two years. Although we will deal with these three aspects of growth in three separate chapters, the aspects themselves are not separable. In life, a child's body, intellect and personality develop together and each affects the other two.

As a psychologist observes a newborn infant, he asks himself several questions. What faculties of body and behavior does an infant have when he first enters the

a drop of his apple juice. He knows his name is Alex, but Alex what? -- he can't remember. He can name his dog, his bike, his ball and (plastic) bat. He knows his coat from his hat. He can sit or lie and ~~fill~~ irregularly ~~cover~~ a paper with pencilled squiggles, a few ~~straight~~ arc lines and perhaps one or two deflated and open circles.

The Infant's Senses

From his first breath, the child is remarkably well-equipped for life. He can see, hear, smell, touch and feel pain. All his senses, except taste, are operating immediately, and even taste develops rapidly. From his first moment outside the womb, the human infant can "feel most stimuli that adults experience. Unlike many ~~mm~~mals -- the puppy, for instance, born deaf and blind -- the senses of the newborn child are in ~~almost~~ good ~~perfect~~ "working order."

The Infant's Reflexes

The newborn comes into the world with a number of well-developed reflexes. Some of these -- the sucking reflex, for example -- are needed for survival. Others, reflexes which are quite complex, ~~simply show~~ are geared to current the state of his nervous system. Seemingly sophisticated reflexes

---

Startles, for example, have a regular relationship to level of neurological activity

and somewhat rubbery, they also respond faster to muscular pull. These assets are balanced by the potential danger that unossified bones, if subjected to severe and extended stress, can become deformed as they harden.

The baby's bones ossify at different times and different speeds. However, the hardening of some bones is all but guaranteed by certain ages. By one year of age, for example, three of the 28 hand and wrist bones have already ossified. Other bones, such as those of the skull, take longer to harden. The six soft spots of the infant skull (called fontanelles) do not harden thoroughly until the child is about two years old. Still other bones take years more to ossify completely.

Ossification and skeletal growth, like weight and size, also vary markedly among individuals and groups. Sex is one important factor related to such variation. From birth, a girl's bones grow more quickly. Usually, too, the black infant's skeletal development is more advanced than the white infant's. Genes strongly affect the timing and rate of skeletal development. For example, the bones of the broad-framed child ossify faster than those of the narrowly built child. While genes are prime determinants of bone hardening, sickness, malnutrition and allergies also can affect ossification.

2. Muscles. The newborn infant has all the muscles he ever will have. A revelation that may distress those enthusiastic young fathers of boys who show up in maternity wards waving first baseball gloves. They need not worry. While the number of muscle fibers will remain the same from birth, the fibers themselves will grow longer, wider

growth rate variability + stability = prediction fat

a bit mixed up.



and heavier. Up to seven months, infant males also grow faster. Thereafter, however, the females' growth rate exceeds the male's. This continues until age four (Tanner, Whitehouse, Takaishi 1965).

Besides growing faster, female infants have somewhat more subcutaneous fat than males. This fat, which lies just under the skin, builds up in the fetus until birth, when it begins to disappear. Females have more of this "baby fat" at birth than males, and they lose it a little more slowly. (Stolz & Stolz 1951) The female's skeleton also matures before the male's (Tanner, Whitehouse and Healy 1962). Because girls growth is also more stable than boys and it is more possible to make predictions from early to late skeletal growth. WCK p.1

Nutrition and growth: Nutrition has a definite effect on growth rates ~~(Garrison 1957).~~ Undernourished infants, such as those born to poor families, or during a famine or war, are noticeably smaller and slower growing (Dean 1951). Similarly, by their third years, and often earlier, children of the ~~higher~~ upper social classes--who generally eat more nourishing food--are taller and heavier than their lower-class counterparts. The damage caused by early malnutrition can be permanent. A study of African children afflicted with Kwashiorkor, a nutritional disease common among infants and older children, indicates that while the afflicted infants gained weight and grew taller upon exposure to a sounder diet ~~they are food with enough calories~~ they never did grow as tall or weigh as much as children well fed from birth (Dean 1960). In 1962, after further study, Dean put forward the additional suggestion that even though when such undernourished children take adequate nourishment, their development may fall behind the average after four years of age (Dean 1962).

EXHIBIT 90 - MANUSCRIPT FOR CHAPTER 12

Draft Ex 90 5/16/74 Sutton-Smith

Chapter 12: Cognitive and Social Development.
8 - 12 years.

In recent years there has been a vast growth in the amount of research concerned with cognitive and social development. A great deal of attention has been focussed on the cognitive aspects of social and moral development between the years of 8 and 12, years that are a time of a great increase in the child's awareness of others and his surroundings. There, at one time, these two aspects of personality development, the cognitive and the social, were treated as very distinct and independent areas, there has been, in the past three decades, an upsurge of scientific interest in the relationship between the two. Two major reasons for this development in the field of child psychology are the influence of the developmental theories of Jean Piaget and ~~of Heinz Werner~~, and the increasing concern with educational problems in public and private schools.

Since the early 50's there has been a great deal of public attention paid to the performance of schools, particularly in urban areas. In attempting to upgrade the schools' effectiveness, particularly in ghetto areas, administrators and public officials have increasingly turned to professional psychologists and sociologists for scientific information on why children failed or did well. The increased demand for information and theory in this area has stimulated much research in the area of cognitive processes. Often, in order to solve educational problems, psychologists found that they had to deal with the "whole child." Naturally, this led them to consider the connections between cognitive and social development and to try to arrive at processes and principles that were common to both.

One such theory, that attempts to unite these two aspects of development synthetically is that of Jean Piaget. He has developed several concepts which may be used to describe the cognitive aspects of personality.

## Piaget's Theory of Moral Development

Piaget views morality as essentially developing out of peer relations. Unlike Freudian theory which sees morality primarily as a result of the parent-child relationship, Piaget's view stresses the acquisition of autonomy through social experience with peers growing out of the need to cooperate. According to Piaget, true morality can only be based on autonomy, not on the heteronomy (rule by others rather than oneself) which is at the heart of the relationship between the parent and the very young child. For this reason, then, Piaget holds that morality begins to develop in earnest from around the ages of 7 and 8, as the child's cognitive powers develop and his social interactions with peers increase.

Piaget believes that from early childhood through middle childhood until about the age of 12, the child's concept of justice passes from a rigid sense of right and wrong based on pre-determined (usually literally interpreted parental) codes, to a more flexible notion based on equity and the specifics of a given moral situation. Thus, a 5-year-old will tend to see all lying as bad whereas an older child of 8 or 9 years is more likely to realize that there may be exceptions to this strict rule.

Piaget investigated his theories about moral development by asking children moral questions such as "Why shouldn't you cheat in a game?" or telling them stories that involved moral questions. He then carefully studied the response patterns of children of different age groups and developed categories that characterized the types of morality at different ages.

One type of story that Piaget used involved a conflict between a sense of justice and obedience to [illegible] authority, the [illegible] children whose obedience to parents [illegible]

the news says conforms

of age), while the older children chose obedience to parents less frequently. This result supports to the Piagetian view that early conscience tends to be based on prohibitions (usually parental) against specific behaviours. This is contrast to the morality that develops during the course of middle childhood which is based rather on internal sanctions and general principles.

Piaget has broken down moral judgement into several dimensions. One of these is a scale of relativism vs. absolutism. As indicated above with the example about lying, as the child grows older his judgements tend to become less absolute and authoritarian. Instead he begins to see that morality is based on need for harmony between persons rather than conformity to an iron law. He bases his morality more on the needs and desires of the group as he begins to interact more in the social world. Relativism replaces realism. "For very young children, a rule is a sacred reality, because it is traditional; for the older ones it depends upon mutual agreement." (Piaget, 1932) It should be pointed out here that mutual agreement presupposes a certain decline of egocentrism, and the growth of the ability to imagine another's viewpoint. Thus, very basic cognitive developments underly the growth of moral relativism.

On the question of general principles versus specific prohibitions Piaget's investigations also produced significant results. He asked a group of children between the ages of 6 and 12 what things they thought were unfair. 54% of children between 6 and 8 cited "behaviours forbidden by parents" while only 7% in the 9 to 12 year-old group did so. By contrast, 73% of the 9 to 12 year-olds mentioned inequality of treatment and punishment while only 27% of the 6 to 8 year-olds did so. This is in keeping with a view of morality that sees the child's conscience developing out of pre-moral hedonism (doing whatever one wants to do and can get away with), through a period of

Should mix in more Gruneberg p 100-101. Chel McK. & follow ↑ suggestion at close.

Abil Close to RCK p509

greater reliance on peers for moral standards and judgements, the older the child becomes.

Piaget-Inspired Research on Moral Development

Many researchers have attempted to repeat some of Piaget's studies or to devise new studies to test his hypotheses concerning the stages of moral development. Durkin, for example, (1959) asked 101 boys and girls 6,8, and 8 what was the correct thing to do if one child hit another. The older children tended to ask what the circumstances and motivation of the act were more often than did the younger children. Thus, Piaget's generalization about increased concern with intention received evidential support. Lerner (1937), in studies of both Swiss and American children, also confirmed Piaget's theses about changes in moral judgement. His findings held equally well for lower-class and middle-class children. He found a decline with age in suggestions for solving conflicts by acquiescence to adult demands or obedience to authority.

Hoffman (1971) has tabulated some of the research that deals with Piaget's distinctions concerning moral attributes. He lists 21 studies by various investigators that were conducted in Western countries between the years 1937 and 1964 (including one study done in 1394 that, nevertheless, dealt with an area Piaget discusses , namely restitutive vs. expiative justice). These studies were concerned with relativism vs. absolutism, objective view of punishment vs. immanent justice, intentions vs. consequences, restitutive justive vs. expiative justice, and conformity to peer expectations vs. obedience to adult authority. In all studies but one, Medinnus (1959), Piaget's views were upheld. That is, relativism, objective views of punishment, concern with intentions in moral judgement, concern with restitutive justice and conformation to peer expectations all increased with age.

A 202 Affidavit of Personal Service of Papers H

LUTZ APPELLATE PRINTERS INC.

U.S. COURT OF APPEALS:SECOND CIRCUIT

Index No.

MEREDITH CORP.,
Plaintiff-Appellant,

against

HARPER & ROW, et al,
Defendants-Appellees.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, James Steele, being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

250 West 146th Street, New York, New York

That on the 17th day of June 1974 at 10 East 53rd St., New York
30 Rockerfeller Plaza, New York

deponent served the annexed Appellant's Appendix upon

Edward A. Miller-Attorney for Def.-Appellee Harper - Row
Lankenau, Kovner, Bickford & Abrons-Attorneys for Defs.-Appellees Conger, Kagan & Mussen

the in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Attorney(s) herein,

James Steele

Print name beneath signature

Sworn to before me, this 17th day of June 1974

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31 - 0418950
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975

JAMES STEELE